Central Administrative Tribunal
Lucknow Bench

Cause Title TA 1477 of 1986 (T)

Name of the Parties Uma Shanker Misra ... Applicant

Versus

Union of India ... Respondents.

Part A, B, C

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B - File

B1 — B1477

C - File

C1 —

Certified that the file fit for consigned on 21-5-12

S.O. (J)

(A3)

23.5.1988 Hon. Ajay Johri, Am
Hon. G.S. Sharma, Jm

Sri B.K. Chaudhary proxing to Sri Ashok Mohiley states that though the departmental officials are present today, they have not been able to procure the case file which is with Sri Ashok Mohiley who was expected to be present today before us. Sri Ashok Mohiley, however, has not been able to come. He wants further time to be able to conduct the case. He is allowed to do so.

(A3)

List this case for final hearing on 18.7.1988.

Sri S.D. Singh for the applicant is also present.

Jm

Jm

23.5.88

18-7-88

Hon. Mr. Justice K. Nath, VC
Hon. Mr. A. B. Gorthi, Member (A)

Shri G.P. Napore is holding the brief of Mr. S.D. Singh. He wants further time to file rejoinder. The same is allowed. The case be listed for hearing on 26-9-1988.

Member (A)

VC

(A4)

CAT /J/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

Restoration Application 9-B/T/88 in

O.A./T.A. No. 1477 1986 (T)

(AM)

Uma Shanker Mishra Applicant(s)

Versus

Union of India Respondent(s)

Sr. No.	Date	Orders
	10.3.88	Office report in Restoration Application No 9-B/T/88 Restoration application has been filed by Sri S.D. Singh Counsel for applicant on 24.2.88 before D.R. J. with duly served to the Counsel for the respondents. Submitted. JKSrivastava 10.3.88
	6/8/88	As stamp Adj. to 22.4.88.
	25.4.88	On the request of counsel for the parties, case is adjourned to 25/11/88 for hearing.
	25/4	Restored

(A6)

(A6)

24/2/89. Hon. D. S. Misra, Am.
Hon. G. S. Sharma, Jm.

The applicant in person is present.

On the request of the learned counsel for the respondents the case is adjourned to 11-4-89.

Jm. Am.

Ore

10.4.89 OR

The respondents were directed to ~~produce~~ make the records available on the next date of hearing, if there is no objection.

Counsel for respondents were also informed that no further adjournment will be granted.

Case is submitted for hearing.

Ahuja
10/4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

TA 1477/86

REGISTRATION No. _____ of 198 .

APPELLANT
APPLICANT _____

VERSUS

DEFENDANT
RESPONDENT _____

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with anddate of compliance
	13-7-89 Hon. D.K. Agrawal - JM Sri A.K. Dixit files Vakalatnama on behalf of the applicant. No Division Bench sitting today, therefore, adjourned to 15/9/89 as the first case of hearing. Member (J)	
15/9	No Sitting. Adj to 23.X.89. for hearing. Both the parties are present. 15/9	Submitted for hearing 20/9
23.X.89	No Sitting of D/B. Adj to 11.12.89. Both the parties are present. BOC	
11-12-89	No Sitting. Adj to 24-1-90 11/12	

(A7)

(A7)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1477 of 1986

(Writ Petition No.4954 of 1983 of the)
(High Court of Judicature at Allahabad)
Lucknow Bench, Lucknow.

Uma Shanker Misra ..... Applicant

Versus

Union of India & Others ..... Opposite Parties.

Hon.Justice Kamleshwar Nath, V.C.
Hon. K.Obayya, Member (A)

(By Hon.Mr.Justice K.Nath, V.C.)

The Writ Petition described above is before this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 for quashing an order dated 17.6.80, Annexure-4 by which the applicant, Uma Shanker Misra was dismissed from Govt. service. There is also a prayer for quashing the applicant's suspension and also for a direction to pay the applicant's salary etc.

2. The facts are not in dispute. The applicant was appointed in 1955 as a Time Scale Clerk in the Telephone Department under the opposite parties. He was confirmed on 1.3.61. He was suspended from servi on 19.1.73 on account of his prosecution for the criminal offence of house trespass and culpable homicide of a neighbour on the basis of a First Information Report; on the death of the victim the charge was converted into murder punishable under Section 302, Indian Penal Code. The applicant was convicted by the Court of Sessions under Section 302

and awarded punishment of life imprisonment. The matter figured before the Hon'ble High Court in a Criminal Appeal and by judgement dated 8.11.78, Annexure-2 the conviction and sentence of the applicant were converted/modified into one under Section 304 Part I IPC with a sentence of seven years Rigorous Imprisonment and Rs.2000/- fine. The conversion of the conviction and sentence was communicated by the applicant to the Department by Annexure-3. In course of time the impugned order of dismissal was passed on 17.6.80 without holding an enquiry in exercise of the powers conferred under Rule 19(i) of C.C.S.(CC&A) Rules, 1965 read with proviso (a) to Article 311(2) of the Constitution of India. The relevant portion of the order is as follows :-

> " And whereas it is considered that the conduct of the said Shri Uma Shanker Misra, Office Assistant(Time Scale Clerk) which had led to his conviction is such as to render his further retention in the Public Service undesirable.
>
> Now therefore, in exercise of the powers conferred by Rule 19(1) of the Central Civil Services (Classification,Control & Appeal Rules, 1965 the undersigned hereby dismisses the said Shri Uma Shanker Misra, Office Asstt (Time Scale Clerk) from service with effect from 17th June, 1980".

3. An appeal made by the applicant was dismissed by the appellate authority by order dated 2.5.84,Annexure-3

4. The case of the applicant is that the impugned order of dismissal is invalid because the conduct on the basis of which the applicant was convicted by the Criminal Court is not related to the performance of the official duties of the applicant. In this connection, it is also urged that the disciplinary authority did not consider the conduct of the applicant before passing of the order.

5. There is no warrant for contention that in order to attract the application of Rule 19(i) of the C.C.S. (CC&A) Rules,1965 or of clause (a) to the proviso of Article 311(2) of the Constitution of India, the conduct leading to conviction must be related to the discharge of the official duties of the delinquent Govt. servant. The simple requirement is the existence of a ground of conduct which has led to conviction on a criminal charge. It is not possible to add a further condition to these requirements that the conducts must relate to the performance of official duties in course of which the crime is said to have been committed

6. The learned counsel for the applicant however has relied upon two decisions; Dost Mohammad Vs. Union of India & Others 1981 LAB.I.C. 1210 decided by the Hon'ble High Court of Allahabad and Shanker Das Vs. Union of India & Others 1985 LAB.I.C. 590 decided by the Hon'ble Supreme Court.

7. In the case of Dost Mohd. (supra), a peon in the post of Telegraph Department, had been convicted

for an offence punishable under Section 323, I.P.C. in connection with an incident of Marpit which took place in Dost Mohammad's village. After conviction Dost Mohd. was dismissed from service by exercise of powers under Rule 19(i) of the CCS (CC&A) Rules, 1965. The High Court held that in order to apply Rule 19 the conviction must be in respect of which a departmental trial could be taken against the Govt. servant. It was observed that the incident of Marpit could not be a subject matter of any departmental trial under the Rules. The High Court proceeded to observe as follows :-

> "...The competent authority must apply his mind to the conduct of the Govt. servant which has led to his conviction to ascertain as to whether there was any reasonable nexus in the conduct and his official duties or the conviction involving moral turpitude which would bring the public service into disrepute". (emphasis supplied).

8. It will be clear from these observations that the Rule 19(1), according to the High Court, could be applied to two kinds of cases :

(i) Cases where the conduct has reasonable nexus with official duties, and

(ii) Cases where the conduct involves moral turpitude which would bring the public service into disrepute. In this connection we may add that if the Conduct Rules do not restrict the Govt. to take action for misconduct only in respect of acts done and connecte

with employment, no such restriction can be read into the powers of the Govt. Rule 3(1) (iii) of the CCS (Conduct) Rules, 1964 requires that a Govt. servant "shall do nothing which is unbecoming of a Govt. servant". An unbecoming conduct referred to in this Rule is not a conduct with relation to employment; it is conduct as Govt. servant. It is well recognised that the relationship between the Govt. and the Govt. servant is not merely that of a master and a servant based on contract but has a higher status - it is the relationship of status. It is clear therefore that if the Govt. servant enjoys the benefits of status he must also conform to the standards of conduct as a Govt. servant as a whole, and not merely in the course of his employment. The Govt. Servant Conduct Rules did not figure before the Bench of the High Court which decided Dost Mohammad's case.

9. A similar question arose in the case of Laxmi Narain Vs. District Magistrate 1960 Alld. 55. The petitioner there had allegedly entered into the house of one Chaturbhuj Sahai in the night between 26 and 27th July, 1958 for the purposes of illicit intercourse with the latter's wife. A departmental enquiry was held into that conduct. The institution of the Departmental enquiry was challenged in the Writ Petition on the ground that it did not relate to misconduct committed in connection with duties as a Govt. servant. The Court held in para 20 as follows :-

> " If the petitioner's contention that a Govt. servant is not answerable to Govt. for misconduct committed in his private life is correct, the

result would be that, however, reprehensible or abominable a Govt. servant's conduct in his private life may be, the Govt. would be powerless to dispense with his services, unless and until he commits a criminal offence or commits an act which is specifically prohibited by the U.P. Govt. Servants Conduct Rules.

This would clothe Govt. servants with an immunity which would place the Govt. in a position worse than that of an ordinary employer. It would be almost destructive of the principle laid down in Article 310 of the Constitution that every Govt. servant holds office during the pleasure of the President or the Governor, as the case may be. The power of the State to dispense with the services of any Govt. servant although hedged with safeguards contained in Article 311 and other provisions of the Constitution, is real." In para 22 the High Court went on to add as follows :-

"But it is clear that Article 311 does not restrict the power of the State to dispense with the services of any Govt. servant for conduct which it considers to be unworthy or unbecoming of an official of the State, nor does it fetter the discretion of the State as what type of conduct it shall consider sufficiently blameworthy to merit dismissal or removal. The State has been invested with absolute discretion in this respect. It can demand a certain standard of conduct from Govt. servants not only when performing their official duties but in their private lives as well.

".... Similarly, the Govt. has the right to expect that every Govt. servant will observe certain standards of decency and morality in his private life and shall not go to his neighbour's house in the middle of the night for the purpose of making immoral advances to the neighbour's wife."

In para 23 the Hon.High Court further

observed as follows :-

" In the first place the Govt. servants Conduct Rules are not exhaustive. In addition to the Code of conduct specified in these rules, there exists what is known as an "unwritten code of conduct" which must be observed by every Govt. servant.".

10. The Writ Petition was dismissed; we notice that these aspects of the law did not figure before the Court in Dost Mohammad case. We have already indicated that Dost Mohammad's case takes into its ambit conviction involving moral turpitude which will bring the public service into disrepute. That would obviously include conduct outside the course of employment.

11. We may also refer to the case of Madho Singh Vs. State of Bombay 1960 Bombay / 285 where a police constable was chargesheeted for a rude and improper behaviour with a neighbour over the use of a common latrine. He was punished with reduction of pay. The punishment was challenged on the ground that the act related to private capacity. The High Court rejected the plea and the Court observed in para 5 that in order to enable a master to take disciplinary action against his servant it is not a condition precedent that the misconduct on the part of the servant must arise within his employment and not outside his employment. The Court observed that the master is entitled to take action against the servant if the latter's act has tendency to injure the former's reputation. The Supreme Court took care of the Govt's reputation in the case of S.Govinda Menon Vs. Union of India

1967 SC 1274 when it observed at page 1278 Column (2):-

> " In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of the duties as a servant of the Govt. in order that it may form the subject-matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship."

12. In parting with the case of Dost Mohammad we may mention that the Hon'ble High Court was then of the view that before awarding a penalty the competent authority should give an opportunity of hearing to the delinquent Govt. servant. This view rested on the decision in the case of Divisional Personnel Officer Vs. T.R.Chelappan 1975 SC 2216 but that view was expressly overruled in the case of Union of India Vs. Tulsi Ram Patel (1985) 3 SCC 398 and also in other case cited by the learned counsel for the applicant namely Shanker Dass Vs.Union of India (supra). We may also mention that in the case of Shanker Dass Vs.Union of India(supra) the holding of the disciplinary enquiry was not found to be illegal. That was a case where the employee had made an unauthorised detention of a sum of Rs. 500/- of the Govt. money which he repaid later and also pleaded guilty. On the penalty of removal from service for that

(A15)

default, despite the view of the Trial Court entitling the Govt. servant to the benefit of Probation of Offenders Act, the punishment was held to be whimsical.

13. It is well recognised that the law laid down in a decision must be viewed in the light of the particular facts and circumstances of the particular case. In the case of Dost Mohammad the offence was punishable under 323, I.P.C. on account of Marpit in village. The Court considered that offence to be trivial and indeed the Code of Criminal Procedure treats the offence under Section 323, I.P.C. to be non-cognizable and compoundable as a matter of right. In the case of Shanker Dass, unauthorised temporary withholding of a small money of the Govt. was found to be a result of compelling circumstances of misery of the Govt. servant. The law laid down in the cases has its colour from the facts of those cases.

14. In the case of State of U.P. & Others Vs. Shyam Sunder Yadav 1988 LLJ 328, the High Court found that the department never considered the conduct of the employee which led to his conviction and dismissed him saying simply that he had been convicte The position in the case of Yamuna Prasad Shukla Vs. State of U.P. and Others 1985 LLJ 229 is exactly similar. The unreported consolidated decision of the Hon'ble Allahabad High Court in Writ Petition No.3871 of 1986 (Shyam Narain Shukla Vs.State of U. and Others) and Writ Petition No.6759 of 1986 (Yamuna Prasad Shukla Vs.State of U.P. & Others) d

on 28.7.88 mainly concerned suspension of a Govt. employee during pendency of a criminal trial; the former also dealt with dismissal after conviction for a criminal offence. These decisions, so far as relevant for the purposes of this case, repeat the law that the disciplinary authority has to consider conduct leading to conviction and cannot rest punishment orders barely on conviction. Incidentally, the decision sets out the ratio in Tulsi Ram Patel's case and points out that, accordingly, it is not necessary to give opportunity of hearing to the employee either at the stage of fact finding enquiry or at the stage of imposition of punishment. It is, of course, laid down that it is necessary for the disciplinary authority to peruse the judgement of conviction and consider all the facts and circumstances of the case. We have, therefore, primarily to see whether the disciplinary authority here considered the facts and circumstances concerning the conduct of the applicant leading to his conviction.

15. The record in which the impugned order of dismissal was passed was produced before us. The submission of the learned counsel for the applicant that, according to instructions, the copy of the High Court Judgement was not before the disciplinary authority prior to the passing of the impugned order is belied by the record; the certified copy dated 3.8.79 of the judgement of the Hon'ble High Court is on the record. The record shows that from 5.9.79 there notings and discussions on the judgement and the final order of the disciplinary authority passed on 17.6.80 mentions that

in view of the judgement, the disciplinary authority was of the opinion that the further retention of Shri Uma Shanker Mishra, the applicant, in service was not desirable in the interests of service and therefore to be dismissed from service. The order proceeded to mention that accordingly formal orders were being issued. It is clear enough that the judgement of the Hon'ble High Court was considered by the disciplinary authority and on such consideration the disciplinary authority formed the opinion that it was not desirable in the interests of the service to retain the applicant in employment. It is true that individual elements within the judgement were not discussed separately by the disciplinary authority, but that does not seem to be necessary. What is required is a consideration of the facts and circumstances appearing in the judgement, and a formation of the view on a perusal of the judgement should be adequate.

16. We must mention here that if the judgement itself contains relevant material, a mere omission to set out that material in the order of punishment by the disciplinary authority will not vitiate the decision and will not justify interference within the limits of judicial review. Indeed, as we go through the judgement dated 8.11.78, Annexure-II of the Hon'ble High Court, we notice significant features. According to the case of the prosecution, the deceased used to live on the first floor of a house opposite which and across a road, the applicant used to live

on the ground floor. There was some altercation between the wife of the deceased fondling her child in the balcony of her house and the wife of the applicant at the door of her house. A couple of hours later when the deceased was at his balcony, the applicant is said to have arrived with an iron rod and to have abused the deceased. When the deceased ran into his Courtyard' the applicat reached there and inflicted two blows with iron rod on his head. The deceased on receiving injuries became unconscious and died in the hospital on the 9th day remaining unconscious throughout. The defence of the applicant was a denial and of false implication by the police; he had alleged that the deceased was attacked when proceeding to Nakhas Bazar from Yamuna Jhil.

17. The finding of the High Court is that the attack took place in the courtyard of the deceased; that there was no justification whatsoever for the applicant to trespass into the house of the deceased; that the applicant had intentionally inflicted not on but two blows with force on the head of the deceased with a heavy weapon, the iron rod, and that the offen was punishable under Part I of Section 304, I.P.C. which the applicant was punished with Rigorous Im ment for seven years and fine Rs.2000/-.

18. These findings of the Hon'ble High Court s that the incident was not the result of some provo but an intentional act of the applicant so much s he went all the way from his house into the house the deceased *and* inflicted injuries to the deceas a vital part of the body with the *iron rod* which

heavy weapon, leading to death; and yet the applicant in his defence put up an untrue story that the deceased had been struck not in his courtyard but when proceeding to Nakhas Bazar from Yamuna Jhil. It is not like the case of 323, I.P.C. of Dost Mohammad (supra) or of Shanker Dass's temporary embezzlement of Rs.500/- in a state of misery followed by confession of guilt and making good the amount. The act of the applicant was a gross crime which certainly could not bring any credit to the Govt. who had employed him. No Govt. would like crime to creep into its ranks; the conduct of the applicant shocks conscience and constitutes moral turpitude. The judgement of the Hon'ble High Court therefore contained clear material which was relevant for the disciplinary authority to come to a conclusion that it was not desirable in the interests of Govt. service to retain the applicant in employment. The impugned order, in our opinion, does not suffer from lack of consideration of the conduct of the applicant leading to his conviction for the offence punishable under Section 304, I.P.C.

19. The last point by the learned counsel for the applicant is that the punishment of dismissal is too harsh because the applicant's service record had been unblemished. We may refer to a recent decision of the Hon'ble Supreme Court in the case of Union of India Vs. Permanand (1989) 2 SCC 177 holding that the Tribunal cannot interfere with the adequacy of penalty unless it is malafide; however the Court observed that in a case where a person is dismissed or removed or reduced in rank without

enquiry under Article 311 (2) proviso (a) the Tribunal may examine the adequacy of penalty if it is apparently unreasonable or uncalled for having regard to the nature of criminal charge. On a careful consideration of the features of the offence committed by the applicant, we do not think that the punishment of dismissal awarded to the applicant was apparently unreasonable or uncalled for.

20. These are all the points in this case which must fail. The ~~applicant~~ applications is dismissed. Parties shall bear their costs.

Member (A) Vice Chairman

Dated the 13 March, 1990.

RKM

Service Cancel

H. C. J. Form No. 88.

HIGH COURT OF JUDICATURE AT ALLAHABAD

(LUCKNOW BENCH), LUCKNOW

CIVIL SIDE

ORIGINAL JURISDICTION

WRIT PETITION NO. 4954 OF 198 3

1477/86(T)

UNDER

[illegible] Petitioner.

VERSUS

[illegible] Opposite-Party

Date of institution [illegible]

Counsel for Petitioner [illegible]

Counsel for Opposite-Party [illegible]

Sri U.K. Dhaon

Date and result of petition

PSUP—A.P. 162 Uch. Nya. 11-5-83—(673)—1 '83—15,000 (E)

1477/86(T)

GENERAL INDEX

(Rules 2, 9 and 15)

1477/86(T)

GENERAL INDEX

(*Chapter XLI, Rules 2, 9 and 15*)

CIVIL SIDE
CRIMINAL

Nature and number of case WP 4954-83

Name of parties Uma Shankar Meena Vs Union of India

Date of institution _____ Dated of decision _____

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee: Number of stamps	Court-fee: Value	Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
1	2	3	4	5	6	7	8	9
					Rs. P.			
	1	General Index	1					
	2	Writ, Annexure Affidavit	54	6	100-00			
	3	C.M.A. 10496-83	2	1	5-00			
	4	Power	1	1	5-00			
	5	C.M.A. 10242-84	1	1	5-00			
	6	C.A	5	1	2-00			
	7	C.M.A. 8933-84	7	4	7-00			
	8	C.M.A. 8935-84	4	4	7-00			
	9	C.M.A. 11407-84	1	1	5-00			
	10	R.A	13	2	2-00			
	11	C.A.	3	1	2-00			
	12	C.M.A. 3614-85	4	2	7-00			
	13	Power	1	2	5-00			
	14	Order Sheet	100	54				

I have this _____ day of _____ 197 , examined the record and compared the entries on this sheet with the papers on the record. I have made all necessary corrections and certify that the paper correspond with the general index, that they bear Court-fee stamps of the aggregate value of Rs.————, that all orders have been carried out, and that the record is complete and in order up to the date of the certificate.

Date————————

Munsarim

Clerk

PSUP—L. 18 H. C.—1973—8,000.

Group A. 15 (d)

(A2)

2417 2/1

In the Hon'ble High Court of Judicature at Allahabad

Sitting at Lucknow.

Writ Petition No. 11951 of 1983

Uma Shanker Misra ... Petitioner

versus

Union of India and others ... Respondents

I N D E X

Sl.No.	Particulars	Pages
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1549/1

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Advocate
Counsel for Petitioner

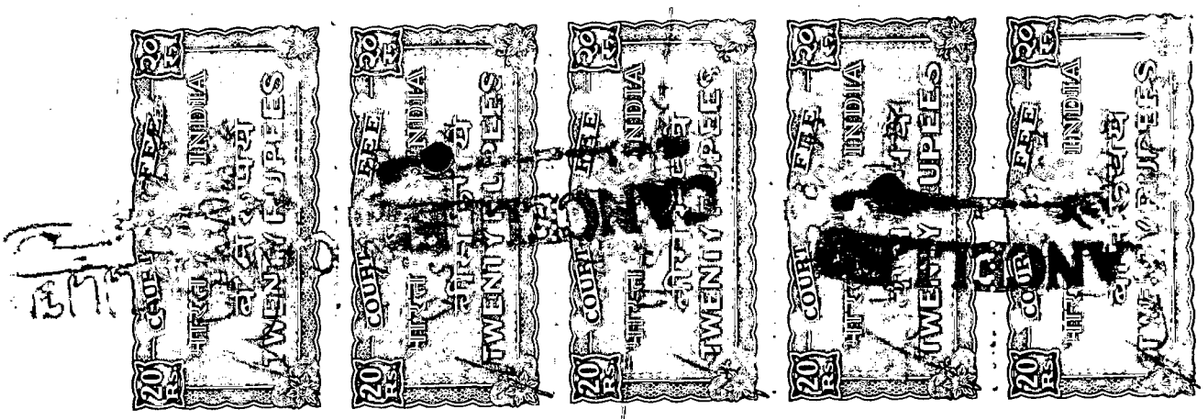
Dated: Lucknow

September 13, 1983.

In the Hon'ble High Court of Judicature at Allahabad

Sitting at Lucknow

Writ Petition No. 4954 of 1983



Uma Shanker Misra, aged about 47 years, son of late Shri R.K.Misra, r/o P.T. 9/1 Malviya Nagar, P.S. Khala Bazar, Lucknow.

... Petitioner

versus

1. Union of India, through the Secretary to Government, Ministry of Communication, New Delhi

2. District Manager (Telephones) 163, Shahnajaf Road, Lucknow

3. Divisional Engineer Phones II (Admn) Office of District Manager (Phones) Lucknow

... Respondents

Writ Petition under Article 226 of the Constitution of India

To

The Hon'ble Chief Justice and his companion Judges in the aforesaid court.

The petitioner, above named, most respectfully submits as under:

(A24)

1. That the petitioner was appointed as Time Scale Clerk by respondent No.3 on 30.12.1955 in the Office of respondent No.3.

2. That respondent No.3 confirmed the petitioner on the said post with effect from 1.3.1961.

3. That the petitioner has worked in the office of respondent No.3 for about 17 years with unblemished service records to his credit.

4. That on 16.1.1973 at about 7 P.M. a F.I.R. was lodged at the Police Statio n, Khala Bazar, Lucknow u/s 308/452 Indian Penal Code against the petitioner by the wife of the deceased in which it was alleged that in a domestic quarrel the petitioner gave a blunt blow causing grievous hurt to the deceased.

5. That as soon as petitioner came to know about the aforesaid F.I.R. he immediately surrendered before the A.D.M.(J) Lucknow on 19.1.1973 in the afternoon and whereafter the learned Presiding Officer was pleased to keep the petitioner behind the bar.

6. That respondent No.3 vide his order No.QF/USM/2 dated 19.1.1973 in exercise of the powers conferred on him under rule 10(1) of the C.C.S.(C.C.A.) Rule,1965 suspended the petitioner with effect from the forenoon of the said date before the petitioner surrendered in the court of A.D.M.(J) at about 3.30 P.M. A true copy of the suspension order is annexed as Annexure 1.

उमा शंकर मिश्र

319

7. That subsequently after a full-fledged trial the learned Sessions Judge found the petitioner guilty of committing murder and convicted the petitioner u/s 302 I.P.C. and sentenced him for life imprisonment by its order dated 22.5.1974.

8. That the petitioner preferred an appeal to the Hon'ble High Court, Lucknow, against the said conviction of the petitioner by the learned Sessions Judge, Lucknow.

9. That the Division Bench of the Hon'ble High Court held that there was no enimity between the appellant and the injured and there was likelihood of exchange of words and prosecution has failed to establish beyond reasonable doubt that the injuries inflicted were sufficient to cause death in the ordinary course of nature. In the circumstances their Lordships held that it is a fit case where the conviction of the appellant should be u/s 304 I.P.C. and accordingly reduced the sentence imposed by the sessions Judge on the appellant to seven years Rigorous Imprisonment and fine of Rs. 2000/- or in default to suffer rigorous imprisonment for a further period of three years. A true copy of the Judgment/ Order dated 8.11.78 is annexed as Annexure 2.

10. That immediately thereafter the petitioner vide his letter dated 9.11.1978 informed respondent No.2, the orders passed by the High Court. A true copy of the said intimation to respondent No.2 is annexed as Annexure 3.

11. That respondent No.3, in exercise ~~the~~ of the powers conferred under rule 19(1) of the Rules, 1965 dismissed the petitioner from the services of the Department with effect from 17th June, 1980 on the ground that the petitioner's conviction u/s 304 of the Indian Penal Code has rendered his further retention in the public service undesirable. The said order was delivered to the petitioner by the jail authorities on 24.6.1980. A true copy of the dismissal order is annexed hereto as Annexure 4.

12. That no show cause notice as required under rule 19(1) was issued to the petitioner by respondent No.3 before issuing of the impugned dismissal order contained in Annexure 4 (supra). The petitioner was thus deprived of the opportunity to defend himself against the order of dismissal.

13. That respo dent No.3 did not apply its mind to the facts and circumstances peculiar in the present case which led to the conviction of the petitioner in the criminal trial. It is submitted that respondent No.3 passed the said order even without perusing the judgment/order of the Hon'ble High Court. In the circumstances the impugned orders have been passed by respondent No.3 in flagrant abuse of powers as conferred under rule 19(1) of the Rules.

14. That the Government of India have also issued various instructions regulating the exercise of power by the disciplinary authority as conferred under rule 19(1) of the Rules wherein it was clearly

directed that the nature of punishment shall be considered on merits of each case by the disciplinary authority while exercising the powers under rule 19(1) of the Rules and a skeleton enquiry should be held by the disciplinary authority. Thereafter a copy of the skeleton enquiry report along with the show cause notice in the tentative draft as contained in item 16 of the appendix V should be furnished to the convicted official. For ready reference the said various instructions are being annexed as Annexure 5 hereto. The disciplinary authority must arrive at the quantum of punishment which should be imposed only after considering the reply submitted by the convicted official keeping in view all the extenuating circumstances.

15. That on 2.8.1980 the petitioner filed an appeal before respondent No.2 through the Superintendent District Jail, Lucknow against the order of dismissal dated 17.6.80, as contained in Annexure 4 (supra). issued by respondent No.3. A true copy of the appeal memo is annexed as Annexure 6. It is submitted that the said appeal was forwarded by the Superintendent District Jails on 20.8.1980 to respondent No.2 which is evident from the endorsement/certificate issued by the ~~Dix~~ Superin endent District Jails on 24.6.83. A true copy of the said certificate/endorsement is annexed as Annexure 7 hereto.

16. That the petitioner was released on parole in May, 1981. The petitioner requested respondent No.2 to dispose of the appeal dated 2.8.1980 as contained

in Annexure 6 (supra) which was pending with him for the last 9 months.

17. That on 15.5.1981 the petitioner submitted a detailed representation/appeal to the respondent No.2 against his dismissal from service vide impugned order as contained in Annexure 6 (supra). A true copy of the said representation/appeal is annexed as Annexure 8 hereto.

18. That his Excellency the Governor of Uttar Pradesh was pleased to release the petitioner on 7.3.1983 under U.P.Prisoners' Release on Probation Act, 1938 on the basis of his antecedent and good conduct during the course of his stay in the prison.

19. That on 26.3.1983 the petitioner again filed a detailed representation/appeal before respondent No.2, the appellate authority annexing all previous appeals dated 2.8.1980 and 15.5.1981 as contained in Annexures 6 and 8 respectively wherein the petitioner prayed for withdrawl of the impugned order of his dismissal. A true copy of the said representation/appeal is annexed hereto as Annexure 9.

20. That thereafter the petitioner again submitted a representation-cum-reminder letters dated 25.6.83 and 14.7.83 to respondent No.2 for disposal of the matter at an early date. True copies of the said reminders/letters are annexed hereto as Annexure 10 and 11. and annexure 12 and 13 respectively.

21. That petitioner also issued notice u/s 80 Civil Procedure Code to respondents No.1 and 2 but no reply was recived. A true copy of the said notice is annexed hereto as Annexure No. XIV

22. That respondent No.2 has not paid any heed to petitioner's repeated requests and nothing was communicated to petitioner indicating the disposal of appeal by respondent No.2.

23. That on 8.7.1983 at about 2 P.M. petitioner along with Shri H.N.Sharma, Circle Secretary AITEE Union Class III of Lucknow Phones District met Sri Gyan Prakash D.E. Cable and Planning, who is acting also as respondent No.3. The petitioner requested respondent No.3 to communicate the decision, if any, taken on his appeals pending for the last three years. Respondent No.3 expressed his inability to communicate any letter to petitioner and told orally that respondent No.2 has clearly ordered in his file that since the petitioner is an outsider hence no reply has to be given to him. Thus respondent No.2 has summarily dismissed the appeals of the petitioner.

Amended vide order of Hon'ble Court dt. 31.8.87

23.(a) - 7.x.

24. That explanation to rule 23 of the C.C.S. (C.C.A.) Rules, 1965 read as under:

Explanation - In this rule:

(i) the expr ssion 'Government servant' inc a person who has ceased to be in Govern service;

(ii) the expression 'pension' includes ad i pension, gratuity and any other retir be

25. That Rule 24(1) of the C.C.S.(C.C.A.(Rules, 1965 reads as under:

> "24. (1) A Government servant, including a person who has ceased to be in Government service may prefer an appeal against all or any of the orders specified in Rule 23 to the authority specified in this behalf either in the Schedule or by a general or special order of the President or, where no such authority is specified
> (i) where such Govt. serviant is or was a member of a Central Service Class I or Class II or holder of a Central Civil Post, Class I o r Class II -
> (a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or
> (b) to the President where such order is made by any other authority;
> (ii) where such Govt. serviant is or was a member of a Central Civil Service, Class III or Class IV or holder of a Central Civil Post, Class III or Class IV, to the authority to which the authority making the order appealed against is immediately subordinate."

26. That it is submitted that under the rules as mentioned above petitioner is all competent to file appeal before respondent No.2 Where a legal duty has been cast on the respondent NO.2 to hear appeals, it is duty bound to consider and pass speaking order as may be deemed appropriate in the circumstances. The summery dismissal of the appeal by respondent NO.2 is arbitrary malafide, illegal and lacks the minimal sense of justice.

27. That the alleged misconduct committed by the petitioner which led to his conviction was not during the course of his employment. A domestic quarrel which is wholly unrelated with the employment of the Government servant cannot be treated as misconduct for the purposes of rule 19(1) of the C.C.S.(C.C.A.) Rules, 1965. It is further submitted that the petitioner is not guilty of any offence which may be classified as casting moral terpetitude.

28. That petitioner understands that the order of respondent No.2 disposing of his appeal is on the file No.S.T./Q.F./U.S.Misra which is under the possession and control of respondent No.3.

29. That the impugned order as contained in Annexure (supra) and the appellate order as contained in File No.ST/QF/U.S.Misra of the office of respondent No.3 is arbitrary, malafide, discriminatory and illegal and as such the said orders are violative of Articles 14, 16 and 19, 300A, 311 of the Constitution of India.

30. That the services of the petitioner have been dismissed by an illegal order in gross violation of the principles of natural justice by respondent No.3. In the circumstances in the interest of justice and i~~n~~ order to avoid irreparable loss to petitioner, it is expedient that the said order is stayed pending disposal of the writ petition.

31. That feeling aggrieved by the aforesaid order and having no other alternative, efficacious and ade remedy, the petitioner prefers this writ petition inter alia o n the following:

G R O U N D S

1. Because no show cause notice whatsoever, as contemplated under various government instructions as contained in Annexure 5 and the Central Civil Service (Classification & Control and Appeal) Rules, 1965 have been issued to the petitioner before passing the impugned order as contained in Annexure 4.

2. Because respondent No.3 imposed a major penalty on the petitioner without affording him any opportunity to defend.

3. Because the impugned orders as contained in Annexure 4 have been issued in gross violation of the principles of natural justice and the constitutional safeguards as provided under Article 311 of the Constitution of India.

4. Because the respondent No.3 has issued the impugned order mechanically without applying its own mind as to the determination of the quantum of punishment.

5. Because the conduct leading to the conviction of the petitioner cannot be classified as a conduct involving moral terpitude.

6. Because respondent No.2 have dismissed the appeal summarily without going into the merits of the case.

7. Because criminal conviction of the petitioner is only an extenuating circumstsnce for determinin

the quantum of punishment and conviction of the petitioner as a result of the domestic quarrel wholly unconnected with the employment cannot be treated as misconduct for the purpose of Rule 19 of the CCS (CCA) Rules, 1965.

8. Because respondent No.2 was duty bound to pass speaking order on merits.

9. Because under explanation to rule 23 and rule 24(1) of the CCS (CCA) Rules, 1965, the petitioner has all the rights to file appeal before respondent No.2. As such the order of respondent No.2 contained in file No.ST/CF/USMisra is perverse and illegal.

10. Because there is no reasonable nexus discernible between the conduct of the petitioner which led to his convictio n and the punishment sought tobe imposed by the impugned order.

11. Because respondent No.3 and respondent No.2 have failed to appreciate the clasic distinction made by this Hon'ble High Court that the injury inflicted by the petitioner was not sufficient in the ordinary course of nature to cause death and this convicted the petitioner u/s 304 IPC and not ups 302 IPC.

12. Because prolonged suspension without any show cause notice has render d the suspension order invalid.

(A34)

13. Because under grave and sudden provocation the petitioner committed the act which led to his conviction.

14. Because respondent No.2 and 3 are duty bound to take notice of all such extenuating circumstances while arriving at the conclusion for determining the quantum of punishment.

15. Because respondents 2 and 3 have passed the impugned orders even without going through the judgment and order of the High Court.

16. Because respondent No.2 has not heard the appeal and the orders disposing of the appeal have been passed on the file behind the back of the petitioner.

17. Because the impugned orders as contained in Annexure 4 hereto and on the file No.ST/QF/US Misra disposing of the appeal are illegal, arbitrary, malafide and discriminatory.

18. Because the aforesaid impugned orders have been passed in gross violation of the constitutional guarantees and safeguards as enshrined under Articles 14, 16, 19, 300A and 311 of the Constitution of India.

(19.) Because the impugned order contained in Annexure No.15 to the Writ Petition is

Amended vide order of the Hon'ble Court dt. 8.1.87

PRAYERS

Wherefore it is most respectfully prayed

(A35)

that this Hon'ble Court may be pleased to:

(i) issue writ, direction or order in the nature of Certiorari quashing the impugned orders contained in Annexure 4 hereto; and call forth the file No. ST/BF/USMISRA and quash the orders passed by the Respt. No2. disposing of the petitioners appeal.

(ii) issue a writ, direction or order in the nature of Certiorari quashing the suspension order contained in Annexure 1 hereto;

(iii) issue a writ, direction or order in the nature of prohibition restraining respondents 2 and 3 from interfering with the services of thepetitioner.

(iv) issue a writ, direction or order in the nature of mandamus commanding respondents 2 and 3 to pay to the petitioner all arrears of salary along with interest which has accrued thereon;

(v) award the cost of the petition to petitioner;

(vi) issue such writ, direction or order as this Hon'ble deems fit and proper in the circumstances of the case.

VII issue writ order or direction in the nature of certiorari quashing annexure no 15 to writ petition.

Advocate
Counsel for Petitioner

Dated: Lucknow
September 13, 1983.

Amended vide the order of the Hon'ble Court dt 9.1.87

In the Hon'ble High Court of Judicature at Allahabad
sitting at Lucknow

W.P No. /1983

ANNEXURE NO. I

(A36)

-14-

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

Memo No.QF/USM/2

Dated at Lucknow the 19-1-73

Office of the Divisional
Engineer Phones, Lucknow.

ORDER

Whereas a case against Shri Uma Shanker Misra, Clerk, under A.E. Trunks Lucknow, in respect of a Criminal offence is under investigation.

Now, therefore, the undersigned in exercise of powers conferred by sub-rule 1 of Rule 10 of the Central Civil Services Classification Control and Appeal Rules 1965, hereby places the said Shri Uma Shanker Misra, Clerk under suspension with immediate effect, i.e. from F/N of 19-1-73.

It is further ordered that during the period that this order shall remain inforce the head-quarters of Shri Uma Shanker Misra, Clerk shall be at Lucknow and the said Shri Uma Shanker Misra, Clerk shall not leave the head-quarters without obtaining the previous permission of the undersigned.

Sd/-

(G. Bhushan)
Divisional Engineer, Phones
Lucknow

Copy to: 1- Shri Uma Shanker Misra, Clerk through Sri K.K. Rastogi, A.E. Trunks, Lucknow orders regarding subsistence allowance admissible to him during the period of his suspension will be issued separately.

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Commissioner for Oaths
High Court, Allahabad

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

W.P. No. _____/1983

ANNEXURE No. II

In the Hon'ble High Court of Judicature At Allahabad
Lucknow Bench, Lucknow

Criminal Appeal No. 327 of 1974

Uma Shanker Misra aged about 37 years
S/o Ram Krishna, resident of
30/1 Malviya Nagar, New Labour Colony,
Aishbagh, P.S. Bazar Khala, Lucknow City — Appellant (In jail)

V/s

The State — Respondent

Appeal against the judgement dated 22.5.1974 passed by Sri R.N. Sinha, second Temporary Civil & Session Judge, Lucknow.

Lucknow dated 8.11.1978

Hon'ble Prem Prakash, J.
Hon'ble S.C. Mathur, J.

Cidacated by Hon'ble Prem Prakash.J

Uma Shanker Misra (37), resident of 30/1 Malviya Nagar, New Labour Colony, Aishbagh (Police Circle Bazar Khala), Lucknow has been convicted under sections 302 and 449 Penal Code. He has been sentenced to a term of life imprisonment under the first count and to a term of five years' rigorous imprisonment under the latter. The indictment against his was that on 16th Jan. 1973 at about 6 p.m. he in that very locality committed house trespass by making an entry into the house of Chandra Prakash(42) residing in the house bearing number 29/10 and committed his murder, in the course of the same transaction. He succumbed to his injuries in the hospital on 25th January, 1973.

The autopsy on the dead body was performed by Dr.Prem N- the then Medical Officer, Civil Hospital, Lucknow whose statement made in the trial court (Ext. Ka-20) has been tendered in evidence on 26th January at 3:20 p.m. It revealed the

(16)

presence of a contusion on thehead over the frontal and parietal bones on both the sides in an area of 14 cm x 8 cm. The internal exam showed that there was fracture of his left parietal bone measuring 11cm and 8cm above the left ear, there was fracture of the right parietal bone, 8cm above the right ear. The base of the skull on both the sides of the head ahad also suffered fracture. Brain was found conjested and there was depression in it. In both these fractures the upper and outer tables of the bones were found fractured. In the consequence, Dr. Prem Nath came to the conclusion that death was caused due "to extra-dural haemorrhage of traumatic origin and shok and also associated infection". In his deposition before the Court he stated that the injury"would have caused death" it could be the result of blows from an iron rod.

Prior to that, the injured had been examined on the day of the occurrence by Dr. G.K. Singhal (C.W.1) the then Medical Officer in the Balrampur Hospital at 8.10 p.m.. The injured bore, (1) Brusic 4cms x cm on left side of scalp, 9cms above left ear, Colour red (2) Traumatics welling 14 cms on the top of head 10 cms above right eye brow, (3) Abrasion 1cm x 1.5cms just abce right eye brow and (4) Multiple abrasions over dorsom of right hand and fingers over ane area of 5cms x 2 cms. The injuries were fresh and as pined by Dr. G.K. Singhal were caused by an iron rod, except injury nos. 3 and 4 which could be the result of friction or by fall on the ground. Dr. Prem Nath excluded the possibility of parietal on the ground. Dr. Prem Nath excluded the possibility of parietal and frontal bones being fractured by a fall from the stair case or by a knock at the stairs of the stair case. The condition of patient, as tol by Dr. S.C. Rai, p.w. 7 the then surgeon Balrampur Hospital was serious, he was unconscious and his pulse and beating were w irregular antil the time, he died. He could not speak and al through remained in an unconscious condition.

As the patient was in a bad state he could not be opera upon. Explaining the cause of death as opined in the autopsy report that was also the result of associated infection Dr.Ra said that sometimes on account of head injury such infection is caused.

Dr. Singhal has further stated in Ext.Ka-19 that the t

injuries on the head were separate, was not the result of another. From the medical opinion it is, therefore, manifestly clear that the two blows with considerable force were inflicted on the head of the deceased the instrument of attack could be an iron rod and, that death was due to the head injuries combined with the infection which had set in subsequently. The victim died on 25th January i.e. about nine days after the assault upon him. We will return to this medical opinion at a latter stage.

Briefly stated the prosecution story as it was unfolded at the trial was this in the New Labour Colony, Aishbagh on both sides of the road there are residential quarters. The quarters to the east of the road belong to the Post and Telegraph Department. On the fateful day the deceased was living with his wife Smt. Shakuntala Srivastava in the quarter east to the road on the first floor and opposite his house in the ground floor across the road living the appellant with his family. The appellant is the employee of the Post and Telegraph Department. Triveni Prasad p.w.2 lived in the quarter adjoining quarter of the deceased. On the first floor of the quarter occupied by the accused lived Achhan D.W.2 and adjacent to this quarter was the quarter of Suresh Chand p.w.3 All these quarters are one room tenaments, with a court yard and a kitchen etc.. The stair case leading to the first floor opens in the balcony and in this balcony there is a door leading to the court yard known as 'aagan'. The door opens in the court yard and thereafter is the room. 16th January was the I duzzha day. At about 4 p.m. Smt. Shakuntala Srivastava was standing in the balcony of her house, fondling with her little child. Her smile aroused the suspicion and anger of the wife of the appellant who was sittingjust opposite at the door of her house. She started abusing Smt. Shakuntala Srivastava who however went to her room. After sometime in the evening her husband returned from the office to whom she gave a what had happened. The deceased said to his wife to remain quiet and told her that he would have a talk with the accused so that his wife may not misbehave with her in future. Shortly after at about 6 p.m. when the deceased was in his balcony the appellant armed with an iron rod camethere. He was abusing her husband. On seeing the appellant the deceased ran to his courtyard. The appellant also came there and inflicted two blows upon his head by that time p.w.1 had also entered the

courtyard. She raised shouts for help which brought to the place Triveni Prasad p.w.2 Suresh Chandra p.w.3 and Baijoo pw 4 from the nearby quarters. They intervened pressed the neck of the deceased with the rod. p.w.1 ran to save her husband and catching hold the tie of the accused tried to push him aside but in vain. The injured became unconscious. She wrote the report of the accurrence Ext. Ka-3 which she took to the Police Station alongwith her injured husband. It was lodged at 7 p.m. at p.s. Bazar Khala on that very day. Her husband's brother Surya Prakash was accompanying her.

The investigation of the case was commenced by Sub-Inspector Har Swaroop Yadav on 17 th January. On that very day he interrogated the witness and prepared the site plan. On 25th January, on receiving the information of death, he went to the Balrampur Hospital and performed the inquest on the dead body. After doing the necessary investigation he submitted the charge-sheet on 4.2.1973.

The accused disclaimed his guilt and stated that he had been falsely implicated at the instance of the police. According to him the deceased had been assaulted at about night fall on that day when he was going to Nakhas Bazar via the Jamuna Jheel. In support of his plea he examined Mukut Behari D.W.1 of that colony and Ram Dhani D.W.3 whose house lay at a distance of fifty paces from the house of the deceased and Jugal Kishor D.W. 4 whose shop is on the way from Jamuna Jheel to Balrampur Hospital. The trial court rejected the plea as false and rightly D.W.1 employed in the Telephone Exchange where the appellant was also working. He claimed that when h was returning at about 6.25 p.m. he saw theinjured lying near Jamuna Jheel. When cross-examined, the witness acknowledged that although he knew the injured and his wife who was also present there but he did not care to talk to anybody about th occurrence. Moreover the way from RDSO to his colony throug the locality of Nake is shorter than the passage through Jamuna Jheel D.W.2 was also working in the Telephone Exchang After his return from his day's duty at about 6.30 p.m. he saw that the injured was in an unconscious condition and was being taken by wife in a rickshaw. The witness, no doubt appears as an eye witness in the first information report. But his assection that the injured was taken from his house his wife in a rickshaw negatives the plea taken by the

accused that he had been taken from the Jheel to the Hospital. Ram Dhani D.W.3 is a witness whose evidence is nothing but hearsay. Jugul Kishor D.W.4 knew the injured and his wife Smt. Shakuntala Srivastava but it is rather strange that when he saw the injured lying near the Jheel he did not care to inquire whether it was a case of accident or assault. On consideration of defence evidence the plea that the deceased was assaulted near the Jamuna Jheel at about the night fall cannot be accepted and the trial court rightly discarded it.

In the trial the prosecution examined Smt. Shakuntala Srivastava P.W.1 to state the background of the occurrence and the manner it took place in her courtyard that evening she stated that the appellant pressed the neck of her husband with an iron rod, but since no such injury was found on the neck this part of the witness' statement could not inspire be lief. It was a mere exaggeration and enbellishment introduced at the trial. Triveni Prasad whose quarter adjoins the quarter of the deceased was present in his house when he heard the noise from the house of the deceased. He alo-ngwith Baijoo p.w.4 went to the common balcony and saw that hard words were being exchanged between p.w.1 and the appellant. The appellant was climbing down the stairs with a rod of about three feet in length. They then came to the courtyard of the deceased and saw him injured lying down on the ground. He denied to have seen the actual assault althrough in the course of investigation he has stated so. His brother-in-law Baijoo p.w.4 claimed that when he reached the courtyard he saw the appella was attempting blows upon the injured with a rod the wife of the injured was trying to remove him. When the witness intervened the appellant climbed down the stairs wi the rod in his hand. He denied to have made the statement the course of investigation that the neck of the deceased wa pressed with theiron rod. Suresh Chandra p.w.5 lives in th quarter above the house of the appellant. At about 6 p.m. was taking his evening meals when he heard the noise from t courtyard of Chandra Prakash house. Through his window he that the appellant was in the angan of Chandra Prakash an latter's wife was trying to remove the appellant by holdin neck. When the witness came in his balcony he saw the appellant coming down the stair case and he was abusing th injured and his wife. The appellant was holding an iron

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While standing on the road also the appellant was abusing Chandra Prakash. Thereafter the injured was brought to his balcony and his condition became serious. He had accompanied the injured to the police station where a report was lodged by p.w.1 thereafter the injured was sent to the hospital for treatment. The witness further declared that when he entered the house of the injured his wife told him that the appellant had assaulted his wife with a rod. The electric bulb, according to the witness, was burning in the angan of Triveni Prasad house which was shedding its light in the angan in front of the quarter of the deceased, the intervening wall being only six feet in height. On this evidence the trial court held that the appellant committed the murder of the deceased with iron rod by causing on his head several blows. Accordingly, he was convicted and sentenced in the terms stated in the above.

Counsel for the appellant has contended before us that in the present the testimony of Smt. Shakuntala Srivastava cannot inspire implicit belief. He has invited our attention to the first information report, where it was stated that the appellant was armed with a baint. It is argued that if p.w.1 was there and the avowed eye witnesses were at the spot and saw the appellant coming down the stair case with an iron rod the weapon of attack would have been described as suck end ~~prick~~ precisely in the first information report. Second stress has been laid upon the recital in the first information report that the neck of the deceased was pressed by the appellant with an iron rod although he had not suffered any such injury. In our opining the alleged infirmities are not such as to caste doubt upon the testimony of the witness. It has been established that the injured was assaulted in the courtyard of his house in that evening. There was verbal altercation, between the appellant and the deceased and his wife which must have had attracted the attention and brought to the angan the persons livin in the immediate vicinity of the house. It is not said that the wife of the deceased was not present in her house in that evening. It may be that there was no pre-existing enmity between the appellant and the injured and it is also likely that some exchange of words had taken place between the deceased when he was at the balcony of his house and the appellant which brought the latter, in the courtyard of the house though there was no justification whatsoever for the appellant to trespass into the house of the deceased. The l

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whose presence cannot be doubted described the weapon as a stick in the first information report. At any rate when we find that the injured had received the blows in the courtyard of his house, non description of the weapon of attack cannot be a ground to disbelieve the ocular testimony. Likewise if the prosecution had indulged in some embellishment by stating that by the rod the neck of the deceased was pressed it will not adversely affect the prosecution version more so when the medical opinion confirms that two blows with heavy stick to with an iron rod were delivered upon the deceased.

As we have already noticed the testimony of other eye witnesses affords strength in an ample measure to p.w.1. Their presence at the spot was natural. Their arrival was not accidental. The evidence excludes the possibility of any conclusion between p.w.1 and the withesses produced by the evidence of such natural witnesses cannot be explained on any other hypothesis than that the individual statements are true. The statement made by p.w.1 deserves reliance to be placed upon it. The witnesses were in collusion with p.w.1 having been negatived there remains no other case, but the reality of the fact. Examined in that manner the trial court rightly held that the appellant was the author of the crime in the courtyard of the house of injured at 6 p.m. on that day.

Next, the learned counsel has strenously urged that having regard to the postmortem report that death was also caused 'due to infection' the act was not punishable under section 302 penal code. According to him this is a clear case under section 304 part-II penal code.

We may briefly return to the material facts necessary to appreciate the submission. The injured died in the hospital on 25th January that is to say about nine days after the occurrence. He however remained unconscious. Dr. Prem Nath who performed the postmortem examination stated that the head injury would have caused death. In the postmortem he had however, given the reason of death as extra-dural haemorrhage of traumatic origin and shock and 'associated infection' Dr. S.C. Rai p.w.7 the Surgeon, Balrampur Hospital was of the opinion that 'Associated infection' occurs sometimes on account of head injury and that sometimes such infections are antibiotic resistant'. Further in answer to a court question he stated that the infection found in the injured was the result of the injury. Dr. Rai was not questioned that the

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injuries found on the deceased were sufficient in the ordinary course of nature to cause death.

Relying on the above medical evidence Sri Mulla submits that the charge under section 302 penal code has not been made out but against the appellant. In other words he submits that the present case does not come under the clause 'thirdly' of section 300 of the penal code.

Clause 'thirdly' of section 300 of the penal code reads as under :-

'300 Except in the cases hereinafter except, culpable homicide in murder, if the act by which the death is caused is done with the intention of causing death or .....if it is done with the intention of causing bodily injury intended to be inflicted in sufficient in the ordinary course of nature to cause death or .....' The distinction between culpable homicide not amounting to murder and murder has, Therefore, to be kept in mind while dealing with a charge under section 302 penal code. Under the category of unlawful homicide fail both case of culpable homicide amounting to murder and those not amounting to murder. Culpable homicide is not murder when the case fall within the five exceptions to section 300 penal Code. If the prosecution fails to discharge the onus the charge of murder would not be made but the case may be one of culpable homicide not amounting to murder, as described under section 299 penal code.

We have, therefore to see whether theprosecution has established the ingredients of clause 'thirdly' under section 300 penal code.

That the appellant caused not one two blows with force on the head of the deceased with heavy weapon like iron rod have been fully proved. The intention to cause bodily injury to the deceased is thus manifestly clear. In that manner first of clause 'thirdly' stands proved.

With regard to the second part of 'thirdly' namely "Bodily injury intended to be inflicted is sufficient in ordinary course of nature tocause death", the court will judge from the nature of the injuries and other evidence

including the medical opinion as the injuries intentionally inflicted by the appellant on the deceased were sufficient in the ordinary course of nature to cause death vide virsa singh vs. State of Punjab (A.I.R. 1958 S. 465). The possibility that skilful medical treatment might prevent the fatally result is irrelevant.

At this stage we would like to refer two classes of murder cases which often cause considerable difficulty. The first class of cases is when death results not from the injuries themselves but from some cause which is unforeseen. A man may be stabbed yet die of pneumonia or some fever if the disease is the natural and probable result of the injury cases the person,who inflicts the injury must be held responsible for the disease arising from the injury. On the other hand, if cannot be said to be the likely consequence of the injury. If the deceased was stabbed with an intention to cause death and death in such case occur not immediately or directly as the result of stabbing the case may be one of murder. In cases of this kind the evidence of the doctor is invaluable. His evidence will provide the only proof as to whether the death was the direct or natural result of the wound or injury inflicated. In the present case the medical opinion is hesitant with regard to the cause death neither Dr. Prem Nath nor Dr. S.C. Rai was posed, that the injuries were sufficient in the ordinary course of nature to cause death. The deceased lived for about nine days after the occurrence. Dr. S.C. Rai further stated that the infection sometimes sets in on account of head injury. Neither of the doctor has stated that even without infection the injuries were sufficient in the oridinary course of nature to cause death. When such is the conflict in evidence we think that clause 'thirdly' of section 300 penal code has not been established beyond reasonable doubt in the case. The evidence fulfils one of the ingredients of section 299 penal Code, namely that the appellant caused death by doing an act with the intention of causing such bodily injury as is likely to cause death. We accordingly hold that it is a fit case where the conviction of the appellant should be under section 304 part I of the Indian Penal Code.

The learned counsel has referred us to will i.e.(William)

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silency vs. State of Madhya Pradesh (A.I.R. 1956 S-C116) and Ram Prakesh vs. State (1969 A.W.R.S.C.C.28), to support his contention that the case falls within Part II of Section 304 penal Code. Both the case are distinguishable on facts. In the first case the accused snatched a hockey stick from his younger brother and gave one blow on his head with a hockey stick with the result that his skull was fractured. The doctor placed the injury no higher than 'likely to cause death'. The instrument of attack was a hockey stick. In the second case the injury was caused by an ordinary lathi which had no Iron rod etc. and the blow was not repeated. The deceased was an old man of sixty years. His skull bone had became brittle on account of old age. In respect of injury the brain had remained intact. It was therefore, held that the act of the accused was only likely to cause death within the meaning of section 304 (Part II) of the penal Code.

For the discussion in the foregoing the appellant is convicted and sentenced to a term of seven years R.I. and a fine of Rs. 2000/= in default to suffer R.I. for a further term of three years-under section 304, part I penal Code, Out of the fine, if deposited Rs. 1500/= shall be paid to Smt. Shakuntala, the widow of the deceased. The conviction and sentence awarded to the appellant to a term of life imprisonment under section 302 penal Code, is set aside. He is on bail. His to surrender to his bails forthwith to serve the unexpired portion of his sentence. His bail bonds are cancelled. The Chief Judicial Magistrate shall report compliance within six weeks.

Sd./= Prem Prakash
Sd./= S.C. Mathur
8.11.1978

In the Hon'ble High Court of judicature at Allahabad
sitting at Lucknow

W.P. No. /19

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ANNEXURE NO. III

Ann 7

To,

The District Manager Telephones
Shah Najaf Road
Lucknow - 226001

Sub:- Information regarding my conviction from the appellate court.

Sir,

With due respect and humble submission I beg to state that my appeal No.327 of 1974 has been decided by the Hon'ble High Court of judicature at Allahabad, Lucknow Bench Lucknow on 8-11-1978 and that I have been convicted under section 304 Part I ~~xxxexx~~ for a term of 7 years R.I. and find Rs.2000/- in default of which 3 years further R.I. has been awarded. This is for your information & necessary action in the matter. However, I am filing special leave petition in the Hon'ble Supreme Court of India New Delhi to prove my innocence to the satisfaction of the said Hob'ble court.

Thanks,

Your's faithfully,

Sd/-

(Uma Shanker Misra)
T.S.C. under suspension

Dated at Lucknow
the 9-11-1978.

उमाशंकर मिश्र

Commissioner for Oaths
High Court Allahabad

In the Hon'ble High Court of Judicature at [illegible]
Sitting at Lucknow
W.P No. /1983

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ANNEXURE NO. IV

BHARTIYA DAK TAR VIBHAG

OFFICE OF THE DISTRICT MANAGER TELEPHONES
Memo no.ST.QF/U.S. Misra/53 Dated at Lucknow 17.6.80

ORDER

WHEREAS Shri Uma Shanker Mishra, Office Assistant (Time Scale Clerk) has been convicted on a criminal charge, to wit, under 304 Part I of Indian Penal Code.

AND WHEREAS it is considered that the conduct of the said Shri Uma Shanker Mishra office Assistant (Time Scale Clerk) which has led to his conviction is such as to render his further retention in the Public Service undeesirable.

NOW THEREFORE, in exercise of the powers conferred by Rule 19(i) of the Central Civil Services (Classification Control and Appeal) Rules, 1965 the undersigned hereby dismisses the said Shri Uma Shanker Mishra, Office Assistant (Time Scale Clerk) from Service with effect from 17th June 1980.

Lucknow
Dt. 17.6.80

Sd/-
(A.A. KHARE)
DIVISIONAL ENGINEER-PHONES-II
Telephone District, Lucknow

Copy forwarded for information and necessary action to

1. Shri Uma Shanker Mishra, C/O the Superintendent Jails District Jail Lucknow.
2. Accounts Officer (TA) o/o the ENT Gandhi Bhawan Lucknow.
3. A.D. Trunks (Admn) Lucknow.
4. Accounts A, B, C & D o/o D.M.T. Gandhi Bhawan Lucknow.
5. District Manager Telephones, Lucknow.

उमाशंकर मिश्र

Commissioner for Oaths

(27)

IN THE HONBLE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

W.P.No._____/1983

ANNEXURE No. V

GOVERNMENT OF INDIA'S INSTRUCTIONS

Need for skeleton enquiry before passing order under Rule 19 (i) - The judgement of the Supareme Court in T.R. Chellappan's case is the subject-matter of review in Union of India v. Kuldip Singh and others which, according to the information furnished by the Ministry of Railways, is still pending before the Supreme Court. It may be quite some time before the Supreme Court's decision, in review of their earlier judgement in Chellappan's case, becomes available. Till the judgement in Kuldip Singh's case becomes available, the judgement in Chellappan's case (see Case Law 2) will hold the field.

2. It may be kept in view that the Supreme Court had only stipulated that before action is taken under Rule 14(i) of the Railway Servants (Disciplinary and Appeal) Rules (corresponding to Rule 19 (i) of the C.C.S. (C.C.A.) Rules 1965), the disciplinary authority should embark upon a summary enquiry in order to enable it to determine the quantum of penalty to be imposed and for this purpose, the employee concerned should be given a hearing. This does not mean that an elaborate enquiry should be held. What is required to be done is to hold a skeleton enquiry, for which the judgement of the Court convicting the employee concerned on criminal charge will itself form the basis, and impose a penalty after issuing a show-cause notice. This show-cause notice is altogether different in nature to the show-cause notice that was earlier required to be issued under Rule 15 (4) of the C.C.S. (C.C.A.) Rules, 1965, before its amendment by the Notification, dated the 18th August, 1978.

3. The question of issuing general instructions in the light of the position stated above is under consideration.

4. Action is being taken in A.V. Division separately to revise the standard form for action under Rule 19 of the C.C.S. (C.C.A.) Rules, 1965.

(G.I., M.H.A. Department of Personnel and A.R. U.O. No. 3735/79-Estt.(A), dated the 7th September, 1979)

As explained in the instructions above, the disciplinary authority should itself in the first instance hold an enquiry, in which the accused official should be given a chance to explain and defend the case. No charge-sheet is required to be served on the accused as the charges have already been established in the court. A copy of skeleton enquiry report held by the disciplinary authority should be furnished along with the show-cause notice to the official in the tentative draft (item 16 of Forms in Appendix V) which may be suitably modified, if so required. In the Inquiry Report no reference should be made about the findings of the charges as they stand already established in view of the court judgement. The reference should be made to the extenuating circumstances, if any, brought forward by the convicted official and the gravity of the criminal charge, for provisionally deciding the quantum of penalty which may be finalised after taking into consideration the reply submitted by the accused in response to the show-cause notice served on him.

(D.G.,P&T No.113/96/80-Disc.II,dated the 19th Aug.1980)

Standard form of show-cause notice for imposing penalty to be issued on the Government servant on his conviction

No.

Government of India

Ministry of .....

Dated .....

WHEREAS Shri (here enter name and designation of the Government servant) ..... has been convicted on a criminal charge under section ....(here enter the section or sections under which the Government servant was convicted) of ....(here enter the name of the statute concerned) and has been awarded a sentence of ....(here enter the sentence awarded by the court);

: 3 :

AND WHEREAS the undersigned proposes to award an appropriate penalty under Rule 19 of the Central Civil Services(Classification, Control and Appeal) Rules, 1965, taking into account the gravity of the criminal charges;

AND WHEREAS before coming to a decision about the quantum of penalty Shri .....(here enter name of the convicted official) was given an opportunity of personal hearing to explain the circumstances why penal action should not be taken against him in pursuance of the provisions of Rule 19 ibid ;

AND WHEREAS on a careful consideration ofthe inquiry report (copy enclosed), the President/undersigned has provisionally come to the conclusion that Shri ....(here enter the name of the official) is not a fit person to be retained in service/the gravity of the charge is such as to warrant the imposition of a major/minor penalty and accordingly proposes to impose on him the penalty of .....(here enter the proposed penalty);

NOW THEREFORE Shri .....(here enter the name of the official) is hereby given an opportunity of making representation on the penalty proposed above. Any representation which he may wish to make against the penalty proposed will be considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this memorandum by Shri ....(here enter the name of Government servant).

The receipt of this memorandum should be acknowledged.

(Name & designation of competent authority)

NOTE - In the above form, portions not required should be struck out according to the circumstances of each case.

ASV

Form of order for imposing penalty on the Government servant on his conviction

No. .....

Government of India

Ministry of .....

Dated .....

ORDER

WHEREAS Shri .....(here enter name and designation of the Government servant) has been convicted on a criminal charge under section ....(here enter the section or sections under which the Government servant was convicted) of ....(here enter the name of the statute concerned);

AND WHEREAS it is considered that the conduct of the said Shri .....(here enter the name and designation of the Government servant) which has led to his conviction is such as to render his further retention in the public service undesirable/the gravity of the charge is such as to warrant the imposition of a major/minor penalty;

AND WHEREAS Shri ..... (here enter name of the official) was given an opportunity of personal hearing and offer his written explanation;

AND WHEREAS the said Shri .....(here enter name of the official) has given a written explanation which has been duly considered by the President/undersigned;

NOW, THEREFORE, in exercise of the powers conferred by Rule 19(i) of the Central Civil Services(Classification, Control and Appeal) Rules, 1965, and in consultation with the Union Public Service Commission, the President/undersigned hereby dismisses/ removes the said Shri .....(here enter the name and designation of the Government servant) shall be compulsorily retired from service with effect from .....(here enter date of dismissal/removal/compulsory retirement)/impose the penalty of .....(here enter the penalty.

Station :

Date :

Disciplinary Authority

NOTE - In the above form, portions not required should be struck out according to the circumstances of each case.

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW.

W.R.NO. /1983

ANNEXURE NO.VI.

To,

The District Manager Telephones,

Shahanajaf Road Lucknow-226001.

Subject: Appeal against DEPhones -II Lucknow no.STOF|US Mishra /53dated 17.6.1980.

(THROUGH SUPDT DISTRICT JAIL LUCKNOW.)

Sir,

The applicant begsto submit as under :-

1. That the applicant hasbeen convicted under section 304 part I of IPC wherein no moral turpitude is involved as such the question of dismissal of his services does not arise.

2. That the involvement of the applicant in a criminal case out of compound where moral turpitude is not involved is not the sufficient ground for the dismissal of the applicant.

3. That according to constitution of India there can be only one punishment for one crime. Thus the applicant is undergoing a sentence awarded by the Hon'ble High Court and as such since no moral turpitude is involved in it as such he cannot be either dismissal or removed from service.

Therefore you are requested to review the decision taken by the DEPhones-II Lucknow at your earliest and communicate the same to the applicant.

Applicant

(U.S. Mishra)
Superior class convict
District Jail -Lucknow.

Dated 2-8-1980

1/19

उ.स. मिश्र

In the Hon'ble High Court of Judicature at Allahabad
sitting at Lucknow
W.P. No. /1983 (32)
Annexure No. VII

सेवा में,

अधीक्षक,
जिला कारागार, लखनऊ ।

महोदय,

प्रार्थी सविनय सादर निम्नांकित निवेदन करता है:-

1- कि प्रार्थी माननीय उच्च न्यायालय लखनऊ द्वारा भा0द0वि0की धारा 304 भाग 2 के अंतर्गत दंडित होकर जिला कारागार लखनऊ में उच्च श्रेणी बन्दी के रूप में कारावासित था तथा 7 मार्च,83 प्रोबेशन पर मुक्त हुआ ।

2- कि माननीय उच्च न्यायालय लखनऊ द्वारा दंडित होने पर उसे डी0ई0फोर्स-11 लखनऊ के अपने मेमो संख्या-एस0टी0/क्यू0एफ0/यू0एस0मिश्रा/53 दिनांक 17.6.80 द्वारा पदच्युत डिसमिस कर दिया था जो उसे कारागार के माध्यम से दिनांक 24.6.80 को प्राप्त हो गया था ।

3- कि प्रार्थी ने अपीलेट ऐथॉरिटी डी0एम0टेली फोर्स बाहजफ रोड लखनऊ को कारागार के माध्यम से एक अपील दिनांक 2.8.80 (जिसकी दो प्रतियाँ प्रार्थना पत्र के साथ संलग्न हैं) को अग्रसारण हेतु प्रस्तुत कर दिया था । जिसे कारागार के माध्यम से दिनांक 20.8.80 को अग्रसारित किया गया तथा उसके रिसीट पर उसकी प्रविष्टि कर दी गई है ।

प्रार्थना

अतएव आपसेप्रार्थना है कि इस तथ्य का प्रमाण पत्र प्रार्थी को प्रदान करने की कृपा करें ।

धन्यवाद ।

दिनांक 23.6.1983

प्रार्थी
ह0/- उमाशंकर मिश्र
(उमाशंकर मिश्र)
भूतपूर्व उ0 श्रे0 बन्दी
पुत्र स्व0श्री राम पूजन मिश्र
डी0टी0 9/1, मालवीय नगर, लखनऊ ।

कार्यालय अधीक्षक जिला कारागार, लखनऊ ।

संख्या 469/AR दिनांक 24.6.1983

प्रमाणित किया जाता है कि बंदी उमाशंकर मिश्रा ने एक प्रार्थना पत्र दिनांक 2.8.80 सेवा संबंधी कारागार के अभिलेखों के अभिलेखों के अनुसार दिनांक 20.8.80 को डी0एम0टेली फोर्स, लखनऊ को भेजा गया ।

ह0/- अपठनीय
दि024.6.83 मोहर
अधीक्षक
जिला-कारागार लखनऊ

Commissioner for Oaths
High Court Allahabad

उमाशंकर मिश्र

In the Hon'ble High Court of Judicature at Al
Sitting at Lucknow

W.P.NC. /19

Annexure No. (A55) (33

To,

The District Manager Telephones,
Shahnajaf Road Lucknow -226001.

Subject: Appeal against DE Phones - II Lucknow
no.STQF/US Mishra/53 dated 17-6-1980.

(THROUGH SUPDT DISTRICT JAIL LUCKNOW.)

Sir,

The applicant begs to submit as under :-

1. That the applicant has been convicted under section 304 part I of IPC wherein no morel turpitude is involved as such the question of dismissal of his services does not arise.

2. That the involvement of the applicant in a criminal case out of compound where moral turpitude is not involved is not the sufficient ground for the dismissal of the applicant.

3. That according to constitution of India there can be only one punishment for one crime. Thus the applicant is undergoing a sentence awarded by the Hon'ble High Court and as such since no moral turpitude is involved in it as such he cannot be either dismissed or removed from service.

Therefore you are requested to review the decision taken by the DEPhones -II Lucknow at your earliest and communicate the same to the applicant.

Applicant

sd/-

(U S Mishra)
Superior class convict
District Jail Lucknow

Dated 2.8.80

Commissioner for Oaths
High Court Allahabad

उमाशंकर मिश्र

(34

A56

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

W.P. No. _____/1983

ANNEXURE No. VIII

To

Shri S.K. Pandya
General Manager
Telecommunications
UP Circle, Lucknow.

Sub : Appeal against dismissal from service vide DEP-II Lucknow order No. ST.Q.F./U.S.Misra/53 dated 17.6.80 copy enclosed.

Sir,

I have most respectfully to submit the following grounds showing that order of DEP-II LKo deserves to be reconsidered for reversal :

1. That according to the Constitution Art. 311 even after conviction in a court, the disciplinary authority is required to hear the official if he has any points by which he may not be punished of loss of job. This provision has been circulated to all administrative authorities for compliance. However, I have been denied such hearing.

2. That the disciplinary authority is required to search in such cases if :

(i) the court judgement shows ingredients of crime detrimental to functioning of the department.

(ii) the judgement establishes a crime involving moral turpitude even though functioning of department may not be hampered in any manner by continued employment.

3. In short, the disciplinary authority is required to perceive his own reasons for deprivation of job of the official, the reasons which have grounds in the court judgemer

4. That from the enclosed Photo stat copy of the ultimate certified judgement of the High Court it may kindly be seen that the nature of conviction does not relate to facts concerning the functioning of the department.

उमा शंकर मिश्र

5. That the facts underlying conviction are in the sphere of civic life. Therefore it is required that these facts be sieved for discovering an element of moral turpitude in the case.

6. That the conviction of the court is for the fact of "causing injury intended to be inflicted which is sufficient in the ordinary course of nature to cause death or ...." goes without saying that the above is language of Sec.304 (Pt.I) of the Indian Penal code. The learned Judge of the High Court deemed that the facts of the case fit into conception of crime envisaged in Part I of the Sec.304 IPC. It is however meet for the disciplinary authority to appreciate the facts admitted in the judgement with a searching eye for and against moral turpitude.

7. That I have been advised to submit that element of moral turpitude in said to inhere an act which is 'heinous crime'. Henious crime is one which any civilised men will not commit under any circumstances. Generally, bestial acts are treated as manifestation of moral turpitude. Facts in my case are simple that I hit a fellow citizen with blund stick on the head, and he succumbed after 9 days in hospital.

8. That the facts of the case hardly show an element of moral turpitude.

9. That under Indian Penal Code criminal mentally, that is reason for committing a crime is not assessed in order to judge the severity of crime. Presumption is that if an offence has been taken cognizance of and convicted, the standard reason for committing the same must have been present. In the penultimate page of the appellate judgement it has been conceded that there may not have been any reason for the committal of the crime. But for compulsions of the said peculiarity of IPC the appellate Judge would definitely having conceded thus have proceeded to place the act of assualt in any other domain like accidental rage, a freak incident etc. rather than pronouncing conviction of Part I of the Sec.304 IPC. Such an elaboration of judge would then have automatically absolved me of suspected moral turpitude. Indian Penal Code being as it is, however, the disciplinary authority has an independent jurisdiction and responsibility to appreciate for himself, from the facts admitted in the judgement, if an element of criminal mentality of kind bestial is patent in the case. I submit that this jurisdiction has not been exercised.

10. That policy of administration of criminal justice not being retributive but rather being reformative, it is harsh that I would undergo the decided penal term and thereafter will have no job and that members of my family innocent as they are would penury.

11. That I am aware that I have very little strength in my appeal have in fact very small privilege to appeal to your sense of compassion towards cause and punishment itself. However aside from that alone, I had an official and social life determined by my education and pursuits before this incident. This is an additional ground to be discovered by the disciplinary authority. The misfortune I have landed in, cannot at all be grafted over the life I lived prior to imprisonment. It may not be necessary to destroy my accomplishment in education and literature. If allowed restoration to former livelihood when I have done the prison term my family might be saved from very gloomy future. This is possible if your honour examines all aspects of the case, some features beingunique I am advised to submit, and record your intention to rehabilitate me to my former job when prison term is served, and thus refer the matter to competent authorities for determining if pleasure of President would be solicited for allowing the period passed in prison as 'leave without pay'.

PRAYER

I therefore pray that your honour may pass orders for exploring the possibility stated in sentence immediately prior to prayer above. I shall ever remain obliged for your merciful justice.

Sd./=
(UMA SHANKER MISHRA)
ON PAROLE
S/o Shri R.K. Mishra
P&T 9/1 Malviya Nagar
Lucknow

Dated : 15.5.1981

Encl. : Photostat copy of certified copy of judgement of Hon'ble High Court, Lucknow Bench in Nine pages and one folio and copy of dismissal order.

Copy forwarded to D.E. Telephones, Shahnazaf Road, Lucknow for favour of information and necessary action. He is requested to refer my appeal dated 2.8.80 against the dismissal order issued by DTP-II, Lucknow, sent through Supdt. District Jail, Lucknow which is still pending with him for disposal.

Yours faithfully

(Uma Shanker Mishra)
15.5.81

उमा शंकर मिश्र

Commissioner for Oaths
319

(37)

A59

In the Hon'ble High Court of Judicature at Allahabad

Sitting at Lucknow

W.P. No. ..../1983

Annexure No. IX

To, Shri A.K. Gupta
The District Manager Telephones,
Lucknow.

Subject: Appeal against the order of dismissal from service passed by the DEP-II Lucknow vide his memo no.ST/QF/USM/53 dated 17.6.80 delivered to me on 24.6.80- second reminder to (copy enclosed as annexure marked A)

Sir,

Respectfully I beg to draw your kind attention towards my undisposed of appeal dated 2.8.80 and its subsequent explanatory reminder dated 15.5.81 and further approach your honour with this application requesting you to kindly consider my appeal sympathetically with its all legal aspects, keeping in view the past record of my service and the release on probation on 7.3.83 granted to me by His Excellency the Governor of the State of U.P. which itself is evident to my good conduct.(Appeal dated 2.8.80 and reminder dated 15.5.81 annexed and marked as annexure nos. B&C).

1. The brief of the circumstances leading to my conviction are that after about 17 years of unblemished service in the deptt. unfortunately I was prosecuted in the court of las for a criminal offence under IPC because in the state of sudden provocation ablunt blow caused grevious hurt to one of my neighbours who subsequently succumbed to death after nine days and finally I was convicted by Hon'ble High Court of Judicature at Allahabad Lucknow bench - Lucknow & sentenced to a term of 7 years and a fine of Rs.2000/-.

2. That during the period I was undergoing the term of my sentence I was dismissed from service by DEP-II Lucknow vide his memo no.ST/QF/USM/53 dated 17.6.80 which is void and deserves to be quashed on the following grounds :-

2(a) that the order of dismissal has been issued U/Rule 19(1) of CCS(CCA) Rules 1965 without giving any reasonable opportunity as required under article 311(2) of the constitution of India for natural justice.

उमाशंकर मिश्र

(b) That the said rule 19 of CCS CCA Rules 1965 is not applicable in my case as my convication was for such a criminal offence which was not related with my duties of the department.

(c) That Rule 19(1) cannot be invoked to dispense with the services of the Govt. servant, if the conduct which led to his conviction was not in the course of employment and could not be a misconduct as per conduct Rules and further if the same could not be the subjedt matter of a disciplinary action. A domestic quarrel which is wholly unrelated with the employment of Govt. servant cannot be a misconduct for the purpose of Rule 19(1) of CCS Rules 1965.

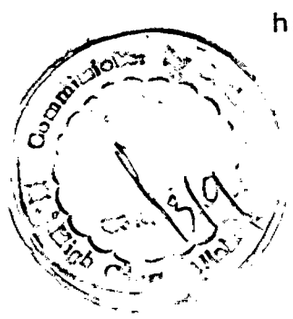
(d) That I was convicted of an offence under section 304 IPC on a complaint made by a private person for away from duty place and out of duty hours for an act committed in the state of a sudden provocation. The said incident cannot be the subject matter of any departmental trial under departmental rules and as such again the Rule 19(1) ibid cannot be applied in this case.

(e) That the expression "the disciplinary authority may consider the circumstances of the case and make such orders there on as it deems fit contemplates that the disciplinary authority shall consider the circumstances of the case and apply his mind to the relevant factors and only thereafter it may pass orders which it may consider necessary. Wherefore the disciplinary authority should have given me an apportunity of hearing or making representation so that I might place before it the facts and circumstances of the case.

(f) That the order imposing penalty under Rule 19(1) without giving any apportunity of hearing is in violation of the principles of natural justice and hence void.

(g) That the disciplinary authority has acted mechanically under Rule 19(1) without considering the facts and circumstances of this particular case and without deciding what penalty, if at all required, should have been imposed upon me.

(h) That the said rule postulates that any of the penalty as detailed in rule 11 of CCS CCA Rules 1965 may be imposed upon a govt. servant but at least one opportunity for pleading his innocense must be given to him before awarding penalty which has been completely denied to me.



अशोक मिश्र

(i) That while passing the order of dismissal the disciplinary aut ority has acted in violation of the principles of natural justice which are not only supplement but also bad in Law as well as he has acted in excess of his jurisdiction.

(j) That it should have taken into consideration my conduct leading to conviction and should have considered whether there was any nexus in the conduct of my official duties.

3. Your kind attention is also invited to an identical case of Sri Dost Mohammad Vs. Union of India and others Civil Misc. Writ petition no.323 of 1979 dated 25.1.80 where a peon employed in the office of AE Phones Allahabad was convicted and fined under section 323 IPC and on account of which he was removed from service under Rule 19(i) of CCS CCA Rules 1965. The Hon'ble High Court Allahabad allowed his petition and quashed the impugned order of his removal and declared him entitled to his cogts. The Hon'ble High Court laid down the principles that home quarrel cannot be subject matter of deptl. conduct rules and as such removal of dismissal of the services of convicted employee under rule 19(1) CCS CCA 1965 Rules without giving an opportunity to the deliquent employee for placing the facts & circumstances of the case is in contravention of Article 311 (2) of constitution and natural justice and hence void. This principle fully applies in my case (A photostate copy from AIR 1981 of this court order in five pages is annexed herewith as annexure marked (d) for ready reference).

4. Your hon'ble attention is further invited to Union of India Vs Rajendra Prasad Srivastava (1977 (2)serv LR81):(1977 LaB/IC(NOC) 75(A) where in a division bench of Hon'ble High Court Allahabad held that the disciplinary authority while excercising his powers under Rule 14(2) of Railway Servants (Discipline and appeal) Rules 1968 must give an opportunity of hearing and representation to the Govt. servant as without giving that opportunity the disciplinary authority cannot consider the matter objectively. The principles laid down in Rajendra Prasad case are fully applicable to my case as the provisions of rule 14(2) of Railway Servant (Discipline and Appeal) Rules 1968 are almost identical to Rule 19 of CCS CCA Rules 1965.

5. Your Hon'bles' attention is further invited to the case of Divisional personnel officer Vs TR Chellappan(AIR 1975 SC 2216), 1975 Lab. IC1598, wherein the supreme Court of India while considering Rule 14 of the Railway servants (Discipline

and Appeal) Rules held that the concluding part of R.14 imports a rule of natural justice in enjoining that before taking a final decision in the matter of delinquent employee should be heard the circumstances must be objectively considered. The rule further requires that there should be active application of mind by the disciplinary authority after considering. The entire circumstances of the case in order to decide the conduct and the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. The principles laid down by the Supreme Court in Chellapan's case squarely apply to my case. There is no dispute that the applicant was not given any - opportunity of hearing and explanation before the disciplinary authority issued the impugned order dismissing him from service.

6. Your attention is also invited to the case of Krishna Kutty Vs Supdt. of Post Offices Earnakulam (1975 servel J 749) (1975L a IC 1732)Ker) almost in similar circumstances the Kerala High Court held that Rule 19(i) cannot be invoked to dispense with the services of a Govt. servant if the conduct which led to his conviction was not in the course of his employment and could not be a misconduct as per the conduct Rules and further if the same could not be the subjedt matter of disciplinary action. A domestic quarrel which is wholly unrelated which the employment of the govt. servant cannot be a misconduct for the purpose of Rule 19(1).

7. That your honour's attention is further invited to the burning fact that the principles laid down by the High Court Allahabad, High Court Kerala and Supreme Court of India which are referred to in the annexure marked 'd' and are cited in paras 3 to 6 of this appeal should be read and applied as legal principles and the quantum of sentenoe and find should not be the subject matter of consideration.

8. Your honours attention is further invited to a case of Lucknow telephone district where a govt. servant named Ambika Singh was fined by the Court of law but disciplinary authority considered the case with reference to facts and circumstances and held that the conduct which led to his conviction had no nexus with the functioning of the deptt. and allowed him to continue in services.

Commissioner

उमाशंकर सिंह

(41)

AG3

PRAYER

It is, therefore, prayed that this application may kindly be treated as legal notice and immediate action be taken as more than 2½ years has passed and my appeal is still pending. In case the impugned order of DEP-II Lucknow, as referred to in the ~~xxx-xxxxxxx~~ subject, is not reversed in the light of Rulings of High Courts an d Supreme Court and the applicant is not allowed to join his duties within the meaning of legal notice the applicant will be complelled to seek justice from tho competant court of Law.

Yours faithfully,

Sd/-

Dated 26/3/83

(Uma Shanker Mishra)
dismissed T.S.Clerk

उमाशंकर मिश्र

3/4

In the Hon'ble High Court of Judicature at Allahabad (42)
Sitting at Lucknow
W.P. No. /1985

ANNEXURE NO. 10

To,

Shri S.C. Misra
The D.M. Telephones,
163, Shahnajaf Road,
Lucknow-226001

Sir,

Most humbly and respectfully the applicant begs to submit as under :-

1. That the applicant was involved in a criminal case under section 308/452 of I.P.C. by a private person; a resident of Malviya Nagar Thana Khala Bazar Lucknow by lodging a FIR in P.S. Khala Bazar at 7 P.M. on 16.1.1973.

2. That the applicant surrendered in the court of A.D.M.(j) Lucknow at about 3.30 P.M. on 19.1.1973 and was sent to jail.

3. That the applicant was suspended from the F/N of 19.1.1973 by the then D.E. Phones, Lucknow Shri G. Bhushan vide his memo No.QF/USM/2 dated 19.1.1973 under sub rule 1(a) of Rule 10 of C.C.S. C.C.&A. ~~under sub~~ Rules 1965. The applicant surrendered in the court at about 3.30 P.M. on 19.1.1973 and was sent to jail but he was suspended from the F/N of 19.1.73 vide memo dated 19.1.73. Thus he was suspended before his surrender in court, which is clearly illegal, malafid e and beyond jurisdiction & technically wrong.

4. That the sub-rule 1 of Rule 10 of C.C.S.C.C.&A. Rules 1965 was not applicable in his case. Probably sub-rule 3(a) of Rule 10 of C.C.S.C.C.& A. Rules 1965 was actually applicable. Thus the applicant could be suspended no doubt w.e.f. 19.1.73 but the suspension memo should have been issued after 48 hours of his detention. The issue of suspension order in the F/N of 19.1.1973 is clearly illegal, unconstitutional, malafide and beyond jurisdication hence liable to be declared void.

5. That the purpose of suspending a government employee when involved in any criminal case, is to give way to fair justice so that he may not use his official capacity to tamper with therelevant

(44) (43)

AGS

record of the investigation, inquiry or trial and influence the witnesses. In this instant case, the FIR was lodged by a private citizen and the witnesses were not any departmental employees. Thus the suspension of the applicant was not must. Moreover, the mis conduct committed by the applicant was out of duty place and duty hours and it was not committed during his course of employment.

6. That your kind attention is drawn to sub-rule 3(b) of Rule 10 of C.C.S.C.C.&A. Rule 1965 which reads that a government servant if convicted for an offence and sentenced to a term of imprisonment exceeding 48 hours and is not forthwith dismissed or removed or compulsorily retired conseq-uent to such conviction should be suspended with effect from the date of his conviction. Thus the intentment of this rule is clear that the suspension of the Govt. servant should be minimum and it also speaks that till conviction the suspension of an employee is not a must.

PRAYER

Therefore, your honour is requested to quash the above referred suspension order which is illegal, unconstitutional, malafide and beyond jurisdiction and kerp declare the same as void at your earliest, failing which the applicant will have no alternative except to knock the doors of competent court of law.

Thanks.

Yours faithfully,

Dated: 25-6-1983

Sd/-

(UMA SHANKAR MISRA)
dismissed office Assistant,
P&T 9/1 Malviya Nagar,
LUCKNOW-226004

उमा शंकर मिश्र

Commissioner for Oaths
Civil Court
319

(A66) (~~42~~) (44)

In the Hon'ble High Court of Judicature at Allahabad

Sitting at Lucknow

W.P. No. ... /1983
Annexure No. # 11

To,

Shri S.C. Misra
The D.M. Telephones,
Lucknow.

Sub: Appeal against dismissal order issued by D.EP II vide his No.GF/ST/USM/53 dated 17-6-80.

Sir,

Most humbly and raspectfully the applicant begs to submit as under :-

1. That the applicant filed an Appeal dated 2.8.80 to your honour through Supdt. District Jail, Lucknow which is still pending since last about 3 years.

2. That he again presented a detailed representation dated 15.5.1981 to your goodself which is also pending at your end.

3. That after release on probation granted by his excellency the Governor of U.P. on 7.3.1983; he presented a detailed representation supported by Ruling of Honourable High Courts & Supreme Court dated 26.3.1983 as a reminder of original appeal dt 2.8.1980 & 15.5.1981 but nothing has been communicated to him so far.

PRAYER

Therefore, you are requested to very kindly intimate the action taken at your level to the applicant at your earliest convenience as about 3 years have elapsed and nothing has been communicated to him.

Thanks,

dt 25.6.1983

Yours faithfully,

Sd//
(UMA SHANKER MISRA)
dismissed office Assistant,
P&T, 9/1, Malviya Nagar,
Lucknow-226004

उमा शंकर मिश्र

Commissioner for Oaths
High Court

(45)

In the Hon'ble High Court of Judicature at Allahabad
Sitting at Lucknow

W.P. No. .... / 1983
Annexure No. XII

To,

Shri A.K. Gupte,
D.M. Telephones,
163, Shah Najaf Road,
Lucknow.

Sub:- Reminder of original appeal dt 2.8.1980 sent through Supdt. District Jail, Lucknow, detailed appeal dated 15.5.81, Appeal dated 26.3.83 & reminder dated 25.6.83 against impugned dismissal order issued by D.E. Phones II Lucknow O/o D.M. Telephones, Lucknow vide his Memo No. QF/ST/US Misra dated 17.6.1980.

Sir,

Most humbly and respectfully the appellant begs to submit as under :-

1. That the appellant inspite of his above written requests and several meetings with you in whom he requested to dispose of his appeal pending for the last 3 years but all in vain. He also requested to communicate him in writing as to what was being done of his appeal but nothing has been communicated to him from your end so far. In this connection your kind attention is invited to Govt. of India's instructions communicated through D.G. P & T No.201/53/76-Disc-II, dated 28th July, 1976 where in the submission of proper records with the appeals in disciplinary cases has been provided. As stated by your honour to him in personal meeting with you that you forwarded his appeal to G.M.T., Lucknow for onwards transmission to Directorate in May 1983 but from the G.M.T's office the appellant was informed that his appeal was simply forwarded for favour of disposal wit out brief history of the case, parawise comments on the appeal, annexures duly completed, disciplinary file in original, service book & C.R. of the appellant which is mandatory as per D.G.'s circular referred to above.

उमाशंकर मिश्र

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Also there is no provision of with holding appeals as per D.G. P & T Letter No.5/2/66 Disc. dated the 17.11.1966.

Your kind attention is also invited to Govt. of India's instructions conveyed through G.I.C.S. (Deptt. of Personnel), O.M. No.39/42/70-Ests.(A) dated 15.5.1971 dealing with time limit for the disposal of appeals, where in one months time has been fixed for the disposal of an appeal, but appeal of the applicant is pending at your honour's end for the last about 3 years and nothing has been communicated to him so far inspite of his written and many verbal requests.

2. That your honour is requested to think with a cool, calm & balanced mind that the appollants' services has been dismissed by the D.E. Phones II Lucknow, simply on the basis of his conviction by the court under section 304 Part I of IPC committed in a state of sudden provocation wit out any motive wherein no moral turpitude is involved. He was not given the opportunity of hearing and explanation and the disciplinary authority proceeded mechanically on the basis of his conviction and issued impugned dismissal order which is liable to be declared void.

3. That the appellant hao been a good poet and critic and that his poems has been published in leading literary magazines viz Saptahik Hindustan, Kadambini, Aajkal (published by [illegible] Central Govt. of India) Tripathoga (published by U.P. Govt.) and in so many literary magazines and daily news papers. He also recited his poems from A.I.R. Lucknow many times. His collection of poems entitled 'Kanch-ke-vritta' was published in the year 1965 the preface of which was written by Padma Bhushan Shri Amrit Lal Nagar, He on honourary basis edited a collection of poems entitled 'Mukhaute Salib Yuddha' in 1968 in which the poems & articles on the current literary thought of seven authors were published in which the appellant was one of the authors. He also on honourary basis edited a book entitled 'Sanket' in 1969 in which the current critical topic 'The position of critic: the question of criticism' was elaborated and discussed.

(47)

PRAYER

Therefore, in the light of above paras your honour is once again approached to communicate the action taken at your level on the appeal pending with you for the last about 3 years, failing which he will have no alternative except to knock the doors of competent court of law.

Thanks,

Yours faithfully,

Sd/-

Dt. at Lko. 14.7.1983.

(UMA SHANKER MISHRA)
Dismissed T.A.O.
P&T 9/1 Malviya Nagar, Lucknow

उमाशंकर मिश्र

In the ~~Hon'ble~~ Hon'ble High Court of Judicature at Allahabad
Sitting at Lucknow (48)
W.P. No /1985

ANNEXURE NO. XIII

A-20

To,

Shri A.K. Gupta,
D.M. Telephones,
Lucknow.

Sub:- Request to declare void the impugned suspension order issued by D.E. Phones, Lucknow Memo No. QF/U.S.M/2 dated 19.1.73 (copy enclosed for ready reference) which is illegal, prejudicial, malafide, arbitrary and unconstitutional.

=====

Ref:- Representation dated 25.6.83

Sir,

Most respectfully the appellant begs to submit as under :-

1. That the applicant was suspended w.e.f. F/N of 19.1.73 by the-then D.E. Phones, Lucknow Shri G. Ghushan vide his memo no.QF/U.S.M/2 dated 19.1.73 under sub rule 1 of Rule 10 of C.C.S.C.C.&A. Rules 1965; although he surrendered in court in the A/N of 19.1.73. The bail was not granted by the-then A.D.M.(J) Lucknow and he was sent to jail. This sub-section 1 is further divided in three sub-clauses viz(a), 2(aa) & (b). Thus further sub-clause was not mentioned in the memo; which is ambiguous hence bad in law. It can be argued that the disciplinary authority has got the discretionary power to do so as a case under section 308/452 IPC was pending against him for investigation and enquiry by the Police authorities. In this connection your kind attention is invited to Govt. of India's instructions & the guiding principles for placing a Govt. servant under suspension issued by G.I., M.H.A., letter No.43/56/64-AVD, dated the 22nd October, 1964. It shall not be out of place to mention that none of these conditions are applicable to his case. The discretion can not be exercised by any authority prejudiciously, arbitrarily & malafiaely. It should be used with care & caution.

2. That your kind attention is invited to R.K. Gupta Vs Union of India, 1971(1)SLR 477(Delhi): where in it was held that a preliminary enquiry can not justify the passing of an order of suspension under Rule 10(1)(b).

3. That your kind attention is invited to Subramanina Vs. State of Kera la, 1973(1) SLR 521 wherein it was held that power of suspension to be sparingly exercised. The court further observed that although suspension is not one of the punishments narrated in Rule 11, an order of sus pension is not to be lightly passed against the Govt. servant for reality cannot be ignored that the suspension brings to bear on the Govt. servant consequences for more serious in nature than several of the penalities made, mention in Rule 11, It has a disastrous impact on the fair name and good reputation that may have been earned and built by a Govt. servant in the course of many years of service. Hence it is imperative that the utmost caution and circumspection should be exercised in passing orders of suspension.

4. That the applicant remained under suspension for a very long period i.e. about 7 years 5 months from 19.1.73 to 17.6.80. Although the applicant after his release on bail represented many times to revoke his suspension but his all efforts turned fruit-less. In this connection your kind attention is invited to a case law of state of Madras Vs K.A. Joseph, 1969 SLR 691: AIR 1970 Madras 155 wherein the court held that suspension cannot be for indefinite period. The court further observed that executive can not be vested with a total arbitrary a nd unfettered power of placing its officers under disability and distress, for an indefinite duration.

PRAYER

Therefore, in the light of above paras your honour is requested once again to quash the prejudicial, mala-fide, arbitrary suspension order referred to in subject of this appeal & declare the same as void at your earliest convenience failing which the applicant will have no alternative except to knock the doors of competent court of law. Specially in the light of the fact, told to the applicant by Shri Gyan Prakash, D.E. Cables & Planning

(5c)

A72

holding dual charge as D.E.(Admn.) on 8.7.83 at 2 P.M. in the presence of Shri H.M. Sharma, Circle Secretary, Lko Telephone District that the D.M.T. had ordered in his file that 'since he is an outsider as such no reply is to begiven to him'. This attitude adopted by you is clearly prejudicial, malafide, arbitrary, unconstitutional and against the norms of Rule 27 of C.C.S.C.C.&A. Rules 1965.

Thanks.

Yours faithfully,

Sd/-

dated 14.7.83 at Lucknow.

(UMA SHANKER MISRA)
Dismissed T.S.C.
P&T 9/1 Malviya Nagar,Lko.

उमा शंकर मिश्र

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A-23

In the Hon'ble High Court of Judicature at Allahabad

Sitting at Lucknow

W.P. No...../1983

Annexure No.XIV

REGISTERED A.D.

NOTICE UNDER SECTION 80 C.P.C.

To,

1. Tha Union of India through Secretary, Ministry of Tele-Communication New Delhi.

2. The Divisional Engineer (Phones)-II Lucknow.

Dear Sirs,

Notice is hereby given under the instructions of Shri Uma Shankar Misra son of Shri R.K. Misra resident of P.T.9/1, Malviya Nagar, Lucknow fully discussed below in pursuant of Section 80 Civil Procedure Code, calling upon both of you to reinstate my client above named with full arrears of pay and allowandes with increments etc. within a period of 2 months next after this notice has been delivered.

2. The information required by the Government under Section 80 C.P.C. aforesaid is hereunder given :-

(a) Name of the prospective plaintiff. - Shri Uma Shankar Misra, son of Shri R.K. Misra, r/o P.T.9/1, Malviya Nagar, Lucknow.

(b) Name & address of the defendants - 1. Union of India through the Secretary, Ministry of Tele-Communication, New Delhi.

2. The Divisional Engineer (Phones)II., Lucknow.

(c) Forum - Court of Civil Judge at Lucknow.

(d) Cause of Action -

1. That the prospective plaintiff was appointed on 30.12.55 as time scale clerk and has been working in office of tho Divisional Engineer (Phones) II Lucknow on the post of Office Assistant (Time Scale Clerk) with entire satisfaction of his superiors and without any complaint from any one.

उमा शंकर मिश्र

2. That the prospective plaintiff was convicted in a criminal case under Section 304 I.P.C. by the Hon'ble High Court, Lucknow vide his judgement and order dated 8.11.78.

3. That the prospective plaintiff was dismissed from service vide letter No.ST/QE/US Misra/58 dated 17.6.80 issued by the addressee No.2 on the basio of the said judgement and order of the Hon'ble High Court.

4. That on being aggrieved of the said order dated 17.6.80, the prospective plaintiff preferred an appeal to D.M.T. Lucknow dt 2.8.80 and before the General Manager (Telephones) U.P. Circle, Lucknow vide his Memorandum of Appeal dated 15.5.81 but nothing has been heard from the said Appellate Authority.

5. That the impugned order of dismissel is illegal, ~~xxxx~~ void and ineffective.

(6) Relief claimed - The prospective plaintiff claims that he be declared in continuous service with full arrears of salary etc. without break in service. The impugned order dated 17.6.80 is illegal, void and ineffective.

I, therefore, call upon you both through this notice to reinstate my above named client in service with full arrears of salary, allowances increments etc. with effect from 18.6.80 within two months next after this notice has been delivery, failing which the remedy for the same will be sought in competent court of law at your cost and risk.

Yours faithfully,

Sd/- 24-3-83

(R.S. Verma)
Advocate

उमाशंकर मिश्र

(A-75)

In The Hon'ble High Court of Judicature at Allahabad
ब अदालत श्रीमान Sitting at Lucknow महोदय

वादी (मुद्दई)
का W.P. No 1983
प्रतिवादी (मुद्दाअलेह)

वकालतनामा

Uma Shanker Misra वादी
बनाम
Union of India आदि प्रतिवादी

नं मुकद्दमा सन १९ पेशी की ता १९
ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

Sri R.N. Trivedi Advocate एडवोकेट
वकील

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वय अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें या कोई वकील महोदय द्वारा की गई वह सब कार्यवाही हमको हर्वदा स्वीकार है और होगी इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर उमाशंकर मिश्र

साक्षी (गवाह) ——— साक्षी (गवाह) ———

दिनांक 13 महीना Sept सन् १९८७ ई०

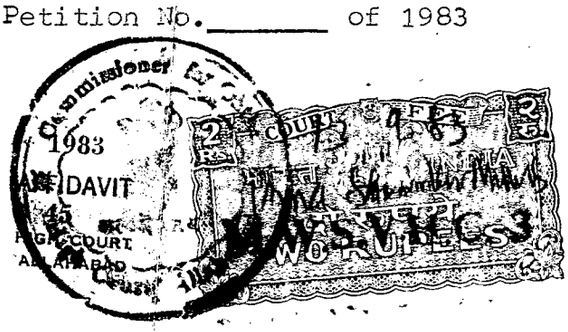
(53)

A76

In the Hon'ble High Court of Judicature at Allahabad

Sitting at Lucknow

Writ Petition No._____ of 1983



Uma Shanker Misra ... Petitioner

versus

Union of India and others ... Respondents

Affidavit

I, Uma Shanker Misra aged about 47 years, son of late Shri R.K.Misra, resident of P.T. 9/1 Malviya Nagar P.S.Khala Bazar, Lucknow, do hereby solemnly affirm and state as under:

1. That the deponent is petitioner in the above writ petition and he is fully conversant with the facts deposed to hereinafter.

2. That the contents of paragraphs 1 to 23, 28, 30, ~~are~~ ~~xxux~~ of the accompanying writ petition are true to my knowledge and those of paras 24 to 27, 29 are believed by me to be true.

3. That Annexures 1 to 14 of the accompanying writ petition are true copies of their originals.

उमाशंकर मिश्र
Deponent

Dated: Lucknow
September 13, 1983.

(54)

-2-

Verifications

I, the above named deponent, do hereby verify that the contents of paragraphs 1 to 3 are true to my knowledge. No part of this affidavit is false and nothing material has been concealed. So help me God.

Deponent

Dated: Lucknow

September 13, 1983.

I identify the deponent who has signed before me

Clerk to Sri R.N. Trivedi Advocate

Solemnly affirmed before me on 13.9.83 at 9.00 am/~~pm~~ by Shri U.S.Misra who is identified by Shri C.B. Kumar clerk of Shri R.N. Trivedi Advocate, High Court, Lucknow.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which has been readout and explained by me.

A.N. Sonkar
Oath Commissioner
High Court, Allahabad
Lucknow Bench
No. 64/5/146
Date 13/9/83

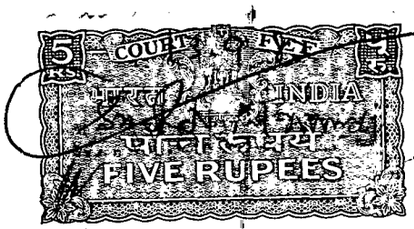
(55)

3/1 (A78)

In the Hon'ble High Court of Judicature at Allahabad

Sitting at Lucknow.

Civil Misc.Appl.No. 10496(W) of 1983



Uma Shanker Misra ... Applicant

In re: 4954

Writ Petition No. of 1983

Uma Shanker Misra ... Petitioner

versus

Union of India and others ... Respondents

Application for interim orders

The petitioner/applicant, above named begs to submit as under:

1. That the aforesaid writ petition is being filed impugning the validity of the order of dismissal of petitioner purporting to be in exercise of the powers conferred under rule 19(1) of the Central Civil Service (Classification, Control & Appeal) Rules, 1965.

2. That for the facts and reasons stated in the accompanying writ petition it would be evident that the impugned orders are illegal, malafide, arbitrary and were passed without following the procedure prescribed by law.

3. That the petitioner would suffer substantial and irreparable loss if the implementation of the impugned order is not stayed pending disposal of the writ petition.

Wherefore it is most respectfully prayed that pending disposal of the writ petition, this Hon'ble Court may be pleased to stay operation of the impugned order of dismissal of petitioner as contained in Annexure 4 to the accompanying writ petition and pass such other orders as are ~~need~~ deemed just andproper in the circulstances of the case.

Advocate
Counsel for Petitioner

Dated: Lucknow
September 13 ,1983.

In the Hon'ble High Court of Judicature at Allahabad,

Lucknow Bench, Lucknow.

14372

Civil Misc. An. No. 10,242 (w) of 1984.

Union of India. .... Applicant.

In re

Writ Petition No. 4954 of 1983.

Uma Shanker Misra. ... . Petitioner.

Versus

Union of India and others. ... .. Respondents.

Application for Condonation of Delay in filing Counter-Affidavit.

For the facts and circumstances stated in the accompanying counter-affidavit it is respectfully prayed that the delay in fiding the counter-affidavit may kindly be condoned and the counter-affidavit which is being filed herewith be accepted and taken on record.

Dhaon

(U.K. DHAON)
Additional Standing Counsel,
Central Government.
Counsel for the Applicant.

Lucknow dated

September 24, 1984.

6/1

In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow.

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS.

In re

Writ Petition No. 4954 of 1983.

Uma Shanker Misra. ... ... Petitioner.

V E R S U S

Union of India and others. ... . Respondents.

I, R.U. Tewari, aged about 53 years, son of Shri Ganga Ram Tewari, Divisional Engineer (Phones (Administration), Office of the District Manager Telephones, Lucknow do hereby solemnly affirm and state on oath as under :-

1. That the deponent is Divisional Engineer Phones (Administration) respondent no. 3 in the instant writ petition and is fully acquainted with the facts of the case. The contents of the writ petition have been read over and explained to the deponent who has understood the same and its parawise reply is as follows.

2. That the contents of para 1 of the writ petition are not disputed.

3. That the contents of para 2 of the writ petition are not disputed.

4. That the contents of para 3 of the writ petition need no comments.

view of the judgment dated November 8, 1978 passed by this Hon'ble Court dismissed the petitioner. It is submitted that Rule 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules envisages that an order can be straight away made by the Disciplinary Authority to impose a penalty without following the prescribed detailed procedure under Rules 14, 15 and 16 of the said rules and consequently no show cause notice is required to be issued.

13. That the contents of para 13 of the writ petition are denied. It is further submitted that respondent no. 3 has not abused the powers conferred under Rule 19 (1) of the aforesaid rules as alleged by the petitioner.

14. That the contents of para 14 of the writ petition as stated are denied. It is further submitted that orders for dismissal were issued according to Central Civil Services (Classification, Control and Appeal) Rules.

15. That the contents of para 15 of the writ petition are denied. It is further submitted that the alleged appeal dated August 2, 1980 was never received in the office of the respondent no. 2.

16. That the contents of para 16 of the writ petition as stated are denied. As already stated above no appeal was ever received in the office of respondent no. 2, so no question of the disposal of the appeal arises.

17. That the contents of para 17 of the writ petition are not disputed.

18. That the contents of para 18 of the writ petition need no comments.

19. That with respect to the contents of para 19 of the writ petition it is stated that alleged appeal dated August 2, 1980 was for the first time annexed to the letter dated March 26, 1983. It is specifically denied, no appeal dated August 2, 1980 was ever received in the office of the answering respondent.

20. That the contents of para 20 of the writ petition are not disputed.

21. That the contents of para 21 of the writ petition need no comments.

22. That the contents of para 22 of the writ petition as stated are denied. It is further stated that the respondent no. 2 by its order dated May 2, 1984 has rejected the appeal of the petitioner and also rejected all subsequent representations submitted by the petitioner addressed to the respondent no. 2.

23. That the contents of para 23 of the writ petition as stated are denied. It is further stated that the petitioner never met Shri Gyan Prakash as alleged in this para. The allegations made in this para are baseless and false.

24. That the contents of paras 24 and 25 of the writ petition need no comments.

25. That the contents of para 26 of the writ petition as stated are denied. It is further stated that the respondent no. 2 by its order dated May 2, 1984 rejected the appeal.

26. That the contents of para 27 of the writ petition as stated are denied.

27. That the contents of para 28 of the writ petition as stated are denied.

28. That the contents of para 29 of the writ petition as stated are denied. The order contained in Annexure No. 4 to the writ petition is just and proper order. It is denied that the order dated June 17, 1980 is violative of any of the provisions of the Constitution of India.

29. That the contents of para 30 of the writ petition as stated are denied. It is further stated that the dismissal order is not in violation of the principles of natural justice. The same is just, and proper and legal order.

30. That the grounds taken in the writ petition are not tenable. The writ petition has got no force and is liable to be dismissed with costs.

Lucknow dated
September 24, 1984.

Deponent.

I, the above-named deponent do hereby verify that the contents of paras 1 to 11, and 15 to 27 of this counter-affidavit are true to my own knowledge and the contents of paras 12 to 14 and 28 to 30 of this counter-affidavit are believed by me to be true on the legal advice tendered and no part of it is false and nothing material has been concealed, so help me God.

Lucknow dated
September 24, 1984.

Deponent.

I identify the deponent who has signed before me.

In the [illegible] Allahabad,

[illegible]

[illegible]

[illegible] ... ... [illegible]plic[illegible]nt.

[illegible]

[illegible]

[illegible] ... . Petitioner.

[illegible]

[illegible] ... .. [illegible]ndents.

[illegible] Filing [illegible]

[illegible] circ[illegible] stated in the [illegible] respectfully [illegible] counter-affidavit [illegible]idavi[illegible] [illegible] and taken on [illegible]

[illegible]

[illegible]

(J. [illegible])

[illegible] Counsel,

[illegible]

[illegible] for the [illegible]plic[illegible]nt.

[illegible] 24, 19[illegible]

(A07)

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

Lucknow Bench, Lucknow.

C.Misc. Application No. 1140(W) of '84

911

Uma Shanker Misra ---------- Applicant

In re:

Writ Petition No. 4904 of '83

Uma Shanker Misra ---------- Petitioner

Versus

Union of India and others ---------- Respondents

15965

APPLICATION FOR CONDONATION OF DELAY.

The applicant most humbly prayed as under :-

That due to the facts that the applicant was collecting some more informations in regard to the facts alleged in C.A. the present Rejoinder Affidavit could not be filed in time.

Therefore it is most humbly prayed that this Hon'ble Court may be pleased to condone the delay whatsoever occasioned in filing the present Rejoinder - Affidavit and to take the same on record, and as duty bound the applicant shall ever pray.

Lucknow-dated
Nov. 5th, 1984

Advocate
Counsel for the Applicant

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,
SITTING AT LUCKNOW.

Writ Petition No. 4954 of 1983.

1984
AFFIDAVIT
44
HIGH COURT
ALLAHABAD

Uma Shanker Misra ..... Petitioner

versus

Union of India and others ..... Opp. Parties.

REJOINDER AFFIDAVIT

To Counter Affidavit filed by Respondents.

I, Uma Shanker Misra, aged about 47 years, son of late Sri R.K. Misra, Resident of P.T. 9/1, Malviya Nagar, Police Station Khala Bazar, Lucknow, do hereby solemnly affirm and state on oath as under:

1. That the deponent is the petitioner in the above noted writ petition and is conversant with the facts of the case.

2. That the deponent has read the counter affidavit and fully understood the contents thereof.

3. That the contents of paragraphs 1 to 5 of the counter affidavit need no further comments.

..... 2.

4. That ~~the~~ with regard to the contents of para 6 of the counter affidavit, the allegations in para 5 of the writ petition are being reiterated.

5. That with regard to ~~para~~ para 7 of the counter affidavit, it is submitted that the petitioner was suspended with effect from the forenoon of 19.1.1973 before the petitioner surrendered in the court of A.D.M.(J) at 3.30 PM. It is submitted that the appointing authority has not applied its mind before passing the suspension order as to the fact that the petitioner was not taken into custody till that time.

6. That the contents of para 8 of the counter affidavit need no further comments.

7. That with regard to the contents of para 9 of the counter affidavit the contents of para 9 of the writ petition are being reiterated.

8. That the contents of para 10 of the counter affidavit are denied. It is submitted that immediately after the High Court's order dated 8-11-1978 the petitioner informed the respondent no. 2 about the order passed by the Hon'ble High Court in his appeal in the criminal case. A photostat copy of the said letter with an endorsement of receipt is being annexed herewith as Annexure R-1 to this rejoinder affidavit. It is submitted that Annexure-3 to the writ petition is the true copy of this letter except the fact ~~that the receipt~~

A90

that the receipt endorsement was not indicated on the said letter.

9. That with regard to the contents of para 11 of the counter affidavit the averments made in para 11 of the writ petition are being reiterated.

10. That the contents of para 12 of the counter affidavit are denied. It is submitted that no show cause notice as required under rule 19(1) was issued to the petitioner by the respondent no. 3 before issuing the impugned dismissal order contained in Annexure- 4 to the writ petition. It is further submitted that the said order was passed by the appointing authority without even going through the judgement of the Hon'ble High Court as the same was not available ~~for~~ with the appointing authority. The appointing authority issued the impugned order contained in Annexure- 4 without application of mind as to the fact that the petitioner had not committed any misconduct during the course of employment and was convicted for a domestic quarrel resulting in the death which is wholly unconnected with the employment. It is further submitted that the Hon'ble High Court has held that the injury inflicted by the petitioner was not sufficient in the ordinary course of nature to cause death and thus convicted the petitioner u/s 304 IPC and not u/s 302 IPC. In the circumstances, had the above said judgement of the Hon'ble High Court been perused by the appointing authority

the appointing authority ought not have issued the impugned order contained in Annexure- 4 to the writ petition. It is submitted that rule 19(1) of the C.C.A. Rules contemplates the show cause notice by the appointing authority to be issued before passing the impugned order as contained in Annexure- 4 to the writ petition.

11. That the contents of para 13 of the counter affidavit are denied. The averments made in para 13 of the writ petition are reiterated.

12. That the contents of para 14 of the counter affidavit are denied and those of para 14 of the writ petition are reiterated. It is submitted that the various instructions as contained in Annexure- 5 to the writ petition clearly indicated that the disciplinary authority must arrive at the quantum of punishment which ought to be imposed only after considering the reply submitted by the convicted official keeping all the extenuating circumstances which the High Court has taken note of and in spite of convicting the petitioner for offence u/s 302 has convicted him to an offence u/s 304 IPC. Had an opportunity to show cause been given to the petitioner by the appointing authority before passing the impugned order contained in Annexure- 4 the petitioner could have clearly satisfied the appointing authority about the circumstances in which the said offence was committed.

13. That the contents of para 15 of the counter affidavit are denied. It is submitted that the appeal dated 2-8-1980 filed before the respondent no. 2 was communicated by the Superintendent District Jail on 20-8-1980 to the respondent no. 2 which is evident from the endorsement/certificate issued by the Superintendent, District Jail, on 24-6-1983 as contained in Annexure. 7 to the writ petition.

14. That the contents of para 16 of the counter affidavit are denied. It is submitted that as per the certificate issued by the Superintendent District Jail, Lucknow, the appeal dated 2-8-1980 filed by the petitioner before the respondent no. 2 on 20-8-1980 which is patently evident from Annexure- 7 to the writ petition. It is further reiterated that the petitioner personally met, when he was released on parol, to the respondent no. 2 and requested him to dispose of his appeal dated 2-8-1980.

15. That the contents of paragraphs 17 and 18 of the counter affidavit need no further comments.

16. That the contents of para 19 of the counter affidavit are denied. It is submitted that the petitioner enclosed the copy of the appeal dated 2-8-1980 along with his appeal dated 15-5-1981 as contained in Annexure- 8 to the writ petition. It is very much evident from Annexure- 8 that in the

end it was specifically mentioned that the petitioner's appeal dated 2-8-1980 is pending before the respondent no. 2 which was sent by the Superintendent, District Jail, Lucknow, for his disposal. It is incorrect to say that a copy of the appeal dated 2-8-1980 was, for the first time, annexed to the letter dated 26-3-1983. The deponent most humbly submits that in all these representations subsequent to 2-8-1980 the deponent has mentioned the representation dated 2-8-1980 is pending before the respondent no. 2 for his disposal. The respondent no. 2 in its pleasure, did not take any action on the petitioner's representation dated 2-8-1980 deliberately in order to restrain the petitioner from approaching the court against any final order passed on his appeal.

17. That the contents of paragraphs 20 and 21 of the counter affidavit need no further comments.

18. That the contents of para 22 of the counter affidavit are denied. It is submitted that the petitioner's appeal was decided as it is alleged in the counter affidavit, on 2-5-1984 much after the filing of the writ petition, i.e. on 20-9-1983. It is submitted that even in disposal of the appeal of the petitioner, the petitioner was not given any opportunity to defend or show cause against the said dismissal vide order

..... 7.

contained in Annexure- 4 to the writ petition. The appellate authority has taken a view commensurate with the earlier order passed, contained in Annexure- 4 to the writ petition and only justified the dismissal of the petitioner.

19. That the contents of para 23 of the counter affidavit are denied, and those of para 23 of the writ petition are being reiterated. It is submitted that the petitioner met the respondent no. 3 along with H.N. Sharma, Circle Secretary, AITEE Union Class III of Lucknow Zone, who told the petitioner that the respondent no. 2 has clearly ordered in his file that since the petitioner is an outsider hence no reply has to be given to him. In the circumstances the respondent no. 2 has summarily dismissed the appeal of the petitioner. The petitioner submits that the original file may be summoned in this Hon'ble Court for its kind perusal with regard to the averments made in the para under reply of the counter affidavit. With regard to the fact that the petitioner and Sri Gyan Prakash, D.E., Cable and Planning along with Sri H.N. Sharma is further supported by the affidavit of Sri H.N. Sharma of which a true copy is being annexed herewith as Annexure R-2 to this rejoinder affidavit.

20. That the contents of para 24 of the counter affidavit need no further comments.

..... 8.

21. That the contents of para 25 of the counter affidavit are denied and those of para 26 of the writ petition are reiterated.

22. That the contents of para 26 of the counter affidavit are denied and those of para 27 of the writ petition are reiterated.

23. That the contents of para 27 of the counter affidavit are denied, and those of para 28 of the writ petition are reiterated. It is submitted that file No. ST/QF/US Misra which is in possession of and control of respondent no. 3 may be called for its perusal by this Hon'ble Court wherein the respondent no. 2 has passed the order that the petitioner need not be communicated his services have been terminated as he is a stranger for the department.

24. That the contents of para 28 of the counter affidavit are denied and those of para 29 of the writ petition are reiterated.

25. That the contents of para 29 of the counter affidavit are denied and those of para 30 of the writ petition are reiterated.

26. That the contents of para 30 of the counter affidavit are denied and those of para 31 of the writ petition are reiterated.

उमाशंकर मिश्र

Deponent.

Dated Lucknow:
Oct. 31st, 1984.

Verification.

I, the deponent above named do verify that the contents of paras 1 to 9, 10 (except last two sentences), 11, 13 to 26 of this affidavit are true to my own knowledge and those of last 2 sentences of para 10, para 12 of this affidavit are believed by me to be true. No part of it is false and nothing material has been concealed, so help me God.

Dated Lucknow:
Oct 31st, 1984.

उमाशंकर मिश्र
Deponent.

I identify the deponent who has signed before me.

Advocate.

Solemnly affirmed before me on 31-10-84 at 12.30 A.M./P.M. by Sri U. S. Mishra the deponent who is identified by Sri P. K. Singh Clerk to Sri Advocate, High Court, sitting at Lucknow.

31-10-84

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read over and explained by me.

31-10-84

High Court Allahabad
No. 44[illegible]

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10/10

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD,

SITTING AT LUCKNOW.

Writ Petition No. 4954 of 1983.

Uma Shanker Misra ..... Petitioner.

versus

Union of India and others..... Opp. Parties.

Annexure - R-1

Annexure R-2

(As per photostat copy annexed hereto)

..... contd.

उमा शंकर मिश्र

In the Hon'ble High Court of Judicature at Allahabad
Sitting at Lucknow
Writ Petition No. 4954/1983

10/11

Annexure R-1

(R98)

To
The District Manager Telephones
Shah Najaf Road
Lucknow - 226001.

Sub:- Information regarding my conviction from the appellate court.

Sir,
With due respect and humble submission I beg to state that my appeal No. 327 of 1974 has been decided by the Hon'ble High Court of Judicature at Allahabad; Lucknow Bench Lucknow on 2-11-1978 and that I have been convicted under section 304 part I for a term of 7 years R.I and fine Rs. 2000/- in default of which 3 years further R.I. has been awarded. This is for your information & necessary action in the matter. However I am filing special leave petition in the Hon'ble Supreme court of India New Delhi to prove my innocence to the satisfaction of the said Hon'ble court.

Thanks.

Yours faithfully.
उमा शंकर मिश्र
(Uma Shanker Misra)
T.S.C. under suspension

Dated at Lw
the 9-11-1978.

उमा शंकर मिश्र

9/11/78

D.M. Telephones
LUCKNOW

31-10-84

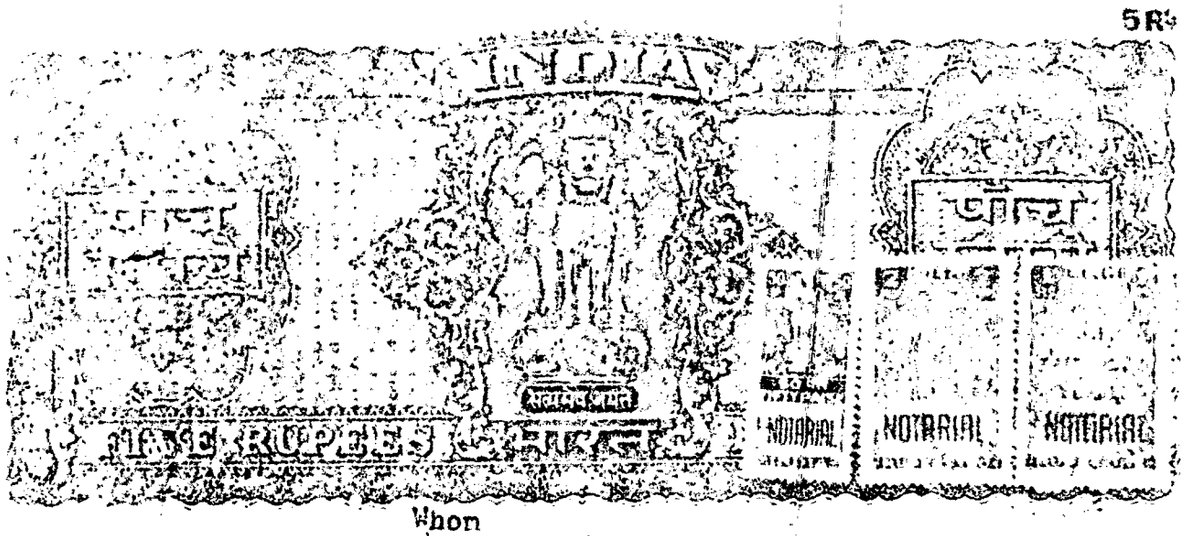
In the Hon'ble High Court of Judicature at Allahabad
Sitting at Lucknow
Writ Petition No. 4954/1983

10/12

Annexure R-2

5R

(A99)



Whom

Before to it may ever concerned.

Affidavit

I, H.N. Sharma aged about 48 years son of late Shri Ram Prasad Raj resident of C/ 48 Paper Mill Colony Nishat ganj P.S. Mahanagar Lucknow do hereby solemnly affirm and state as under :-

1: That the deponent is holding the post of Circle Secretary A.I.T.E.E. Union Class III in Lucknow Phones District since 1973.

2: That on 8.7.83 at about 2 P.M. Shri Uma Shanker Misra along with the deponent met Shri Gyan Prakash DE , Cables and Planning who was also acting as DE Phones , II (Administration) in the office of D.M. Telephones , 163 Shahnajaf road Lucknow . Shri Misra in the presence of deponent requested Shri Gyan Prakash to communicate the decision if any , taken on his appeal against his ~~dismissal~~ dismissal pending for the last three years . Shri Gyan Prakash

उमाशंकर मिश्र

.....2

in the presence of deponent expressed his inability to communicate any letter to Shri U.S. Misra and told orally that the D.M. Telephones Lucknow has already ordered in his file that since Shri U.S.Misra is an outsider hence no reply has to be given to him. Thus D.M. Telephones has summarily dismissed his appeal.

Dated. 29 Oct. 84
Lucknow.

Deponent.

Verification

I, the above named deponent do hereby verify that the contents of paragraphs 1 to 2 are true to my knowledge. No part of this affidavit is false, and nothing material has been concealed so help me God.

Dated. 29th Oct 1984
Lucknow.

Deponent.

SWORN & VERIFIED

I, identify the deponent who has signed before me.

In the Central Administrative Tribunal, Addl. Bench,
(Allahabad) Circuit Bench Lucknow.

...

written Arguments of Union of India

In

Registration No.1477 (T) of 1986

Uma Shanker Misra .. .. Petitioner

Versus.

Union of India and others.. ..Respondents.

....

1. That the petitioner was appointed on 30.12.55 in the Office of Divisional Engineer, Phones, Lucknow as Time Scale Clerk. He was confirmed on the said post with effect from 1.3.1961.

2. That the petitioner was arrested on 19.1.1973 in connection with a murder case. On coming to know about the aforesaid fact the Divisional Engineer, Phones, respondent no.3 vide his order dated 19.1.1973 in exercise of powers conferred on him under Rule-10(1) of CCS(CCA) Rules, 1965 suspended the petitioner with effect from Fore Noon of the said date. A copy of the suspension order is Annexure-1 to the writ petition.

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3. That in the trial the learned Sessions Judge found the petitioner guilty of committing murder and convicted him under Section-302,I.P.C., and sentenced him under Life Imprisonment vide its order dated 22.5.1974. The petitioner preferred an appeal to the High Court against the said conviction. The High Court converted the sentence from Life Imprisonment to that of seven years' Rigorous Imprisonment and a fine of Rs.2000/- and in default to severe R.I. for a further period of three years. The High Court's judgment dated 6.11.1963 is Annexure-2 to the writ petition.

4. That after the High Court's judgment imposing punishment of seven years' R.I. and a fine of Rs.2000/- or in default to three years' further R.I., the respondent no.3 in exercise of the power conferred under Rule-19(1) of the CCS(CCA)Rules,1965 passed an order dismissing the petitioner from service of the Department with effect from 17.6.1980. The dismissal order was delivered to the petitioner by the Jail authority on 24.6.1980, copy of the dismissal order is Annexure-4 to the writ petition. The department in para-12 of the counter-affidavit which had been submitted by the Department stated that a disciplinary authority after careful consideration of the facts and circumstances of the case and keeping in view the judgment dated 8.11.1978 passed by the Hon'ble High Court dismissed the petitioner from service.

It

It was stated that Rule-19(2) of the CCS(CCA)Rules, 1965 envisages that an order can be straightaway made by the Disciplinary authority to impose a penalty without following the prescribed detailed procedure under Rules-14,15 and 16 of the CCS(CCA) Rules,1965 and consequently no show cause notice was required to be issued to the petitioner. The Department received an appeal of the petitioner vide letter dated 26.3.1983 wherein an appeal dated 2.8.1980 was annexed . No appeal dated 2.8.1980 was ever received in the office of respondent no. The respondent no.2 vide its order dated 2.5.1984 had rejected the appeal of the petitioner and also rejected all subsequent reoresentations submitted by him.

The short question which has been convassed on behalf of the petitioner is that he cannot be straightaway dismissed from service by the Department merely on the ground of his conviction on the criminal charge and that show cause notice was essential.

5. That so far as show cause notice is concerned it is to point out that the petitioner was dismissed from service on 17.6.1980 while the instr ctions issued by the Ministry of Personnel Government of India regulating exercise of powers

under Rule-19, filed as Annexure-5 to the writ petition, on 19.9.1980. Therefore, the question of their compliance does not arise.

Secondly the matter was considered by the Hon'ble Supreme Court in the case of Tirkha Vs. J.K.Seth, reported in A.I.R.,1988,S.C.,page-285. The Hon'ble Supreme Court held that "Question raised as to whether or not the appellant " Govt.servant " who was convicted for a criminal offence should have been heard by the Disciplinary authority before imposing punishment is concluded against the appellant "Govt.servant" by a decision of five Judges Bench of this Court in Union of India Vs. Tulsi Ram Patel reported in AIR.1985 S.C.,page-1416). As a matter of fact in the case of Tulsi Ram Patel which was been dealt with in para -149 of (S.C.Cases) or para-148 of AIR. onwards was very similar to the facts of the present case. Under the circumstances,so far as this point is concerned the appellant cannot succeed. In view of the aforesaid pronouncement of the Hon'ble Supreme Court the contention of the petitioner Uma Shanker Misra appears to be no merits of any consideration.

6. That there are cases which provide that conviction under any charge includes the conviction under any law which provides for punishment in a criminal offence. See- AIR.,1966,Andhra Pradesh,page-7

(Case of Lakh Bhushan).

AIR. 1970,Calcutta,page-384,Sunil Vs.State of West Bengal.

The courts have further held that even conviction in drunkenness would attract this proviso or conviction under Section-29 or 34 of the Police Act. The charge in criminal case must relate to misconduct of said magnitude as would have deserved the penalty of dismissal or removal. See-1985,S.C.,page-1416, Union of India Vs. Tulsi Ram Patel,paragraphs no.-54, 60 to 62 and 1986 ,S.C. Cases Service and Labour page-1,Satya Bir Singh Vs.Union of India.

7. That in 1959,Punjab,page-169, a person who was employed as a sweeper in the Railways he pleaded guilty to the charge under Sections-120 and 121 of the Indian Railways Act and was convicted by the Magistrate Ist Class and was directed to pay a fine of Rs.10/- under Sections-120 and Rs.25/- under Sec. 121 of the Act and in default he was to under-go simple imprisonment for seven days and two weeks respectively. A departmental enquiry was held and thereafter he was dismissed from service by the competent authority. The reason given in his dismissal was that he had been convicted by a court of law. He appeal went up in appeal and his appeal failed.

The main contention raised by him before

the Hon'ble High Court was that he was dismissed from service in violation of the provisions of Article-311 of the Constitution of India. The Court held that it is very clear from the provisions of Article-311 sub-clause(2) that the protection of the aforesaid Section cannot be claimed by a person who is dismissed on the ground of misconduct which had led to his conviction and on a criminal charge. It was argued in the aforesaid case that the charges on which the Railway employee was convicted being under Sections-120 and 121 of the Indian Railways Act could not be regarded to fall within the proviso of Article-311 (2) of the Constitution as the offence is covered by the aforesaid Section could not be regarded tobe criminal in the sense in which that expression is used in the proviso appearing under Article-311 of the Constitution. The Hon'ble Judge repelled the arguments and relied upon the case of 1946,Madrass,page- 375 , Venkat Raman Vs. Madras Province wherein it was observed that " The way in which the appellant charge has been used obviously contemplates some accusation and not merely a charge in the technical sense of the Code of Criminal Procedure. In that case a person had been convicted of Contempt of Court and it was held that although the offence of that nature might not fall within the narrow limit of the offence in the penalty clause .It was neverthe less a matter giving rise to a criminal charge within the meaning of proviso in Section-240(3)(a).

It was held that as the dismissed official had been convicted on a criminal charge that formality regarding the notice and a reasonable opportunity of showing cause were not necessary tobe complied with.

The Punjab Judge has agreed with the view of the Madras High Court and held that in the Punjab case it was not necessary to comply with the mandatory provisions of Article-311(2) of the Constitution.

Similarly, the Calcutta High Court in 1970 page-384 in the case of Sunil Kumar Ghosh Vs. State of West Bengal held that a Sub-Inspector of Police who was serving as a District Enforcement Officer was convicted for an offence under Section-29 of the Police Act for violation of the order of transfer. He was convicted by the Magistrate Ist Class, Alipur on 25.11.67 and was sentenced to pay a fine of Rs.100/- or in default to undergo simple imprisonment of one week. His appeal against the sentence was also dismissed. He filed a revision before the Calcutta High Court which was also dismissed and it was held that he is guilty of violating the order of transfer of Nadia.

The Calcutta High Court discussed the facts of the aforesaid case and various provisions and held that offence under Section-29 of Police Act

is a criminal offence and the charge of such an offence is a criminal charge and held that conviction on a criminal charge in this clause includes conviction under any law which provides for punishment for an offence whether by way of fine or imprisonment and that no distinction is made by clause between crime for verification of moral turpetude and other crimes.

Calcutta High Court relied upon in the case reported in AIR.1966 Andhra Pradesh ,page-72 1947, Madras ,page-375, 1957,Punjab,page-97,Durga Singh Vs. State of Punjab and 1959 Assam,page-134, Jagdindra Vs. I.G. and the Court held that clause(2) of Article-311 of the Constitution was not attracted to the facts of the present case and that accordingly no opportunity of hearing or enquiry was to be held before dismissal made on the ground that he had been convicted under Section-29 of the Police Act.

8. That it was argued on behalf of the respondent that the action has been taken against him under Rule-19 of CCS(CCA)Rules,1965. That be so, it is very well settled law that mentioning of wrong provisions under which action was taken would not invalidate the action if the power is otherwise established to take action. See- 1964,S.C.,page-364, 1964,S.C., page-1329, AIR.1953,S.C. ,page-232 at page-236 and 1977, Supreme Court, page-1146.

9. That in view of the aforesaid provisions it is submitted that no case for interference by this Hon'ble Tribunal is made out against the petitioner and the petition is liable tobe rejected.

Ashok Mohiley

(Ashok Mohiley),
Advocate.
Counsel for the respondents.

Dt. ~~September~~ Feb. 22, 90

...ecute procedure for trial of the persons ...ered thereunder, we do not think that the ...itioners could call into aid the provisions ... S. 428 of the Code. In Bhagwan Singh v. ... Superintendent, (1977 (79) Pun LR 19), the Punjab & Haryana High Court said that the benefit of S. 428 can only be claimed by a person whose case is investigated, inquired into or tried under the Cr.P.C. and it cannot be claimed by a person convicted and sentenced under the Army Act by a court-martial.

6. The Delhi High Court in F. R. Jesuratnam v. Chief of Air Staff, 1976 Cri LJ 65 and the Madras High Court in P. P. Chandrasekaran v. Govt. of India, 1977 Cri LJ 677 have also taken the similar view. But the Kerala High Court in Subramonian v. O C Armoured Static Workshop, 1979 Cri LJ 61 has taken a contrary view. In our opinion, the Kerala High Court cannot be said to have laid down the law correctly.

7. In the result, these petitions fail and are dismissed.

Petitions dismissed.

AIR 1988 SUPREME COURT 285

M. P. THAKKAR AND B. C. RAY, JJ.

Civil Appeal No. 1278 of 1973, D/- 9-1-1987

Trikha Ram, Appellant v. V. K. Seth and another, Respondents.

(A) Constitution of India, Art. 311 — Misconduct — Punishment — Conviction for criminal offence — Prior opportunity of hearing by disciplinary authority before imposing punishment — Not necessary. AIR 1985 SC 1416, Followed.

(Para 1)

(B) Constitution of India, Art. 311 — Probation of Offenders Act (20 of 1958), S. 12 — Conviction for criminal offence — Release on probation — Dismissal of offender from service by disciplinary authority — Not permissible in view of S. 12 as it will operate as disqualification for future employment with government — Dismissal order converted into order of removal from service.

(Para 1)

Cases Referred : Chronological Paras

AIR 1985 SC 1416 : (1985) 3 SCC 398 : 1985 Lab LC 1393 (Followed) 1

JUDGMENT :— The question raised in this appeal as to whether or not the appellant who was convicted for a criminal offence should have been heard by the disciplinary authority before imposing the punishment is concluded against the appellant by a decision of a five Judge Bench of this Court in Union of India v. Tulsi Ram Patel, (1985) 3 SCC 398 : (AIR 1985 SC 1416). As a matter of fact in the case of Tulsi Ram Patel which has been dealt with in para 149 (of SCC) : (Para 148 of AIR) onwards was very similar to the facts of the present case. Under the circumstances, so far as this point is concerned, the appellant cannot succeed. Learned counsel for the appellant has, however, called our attention to the fact that the appellant was released on probation by the learned Magistrate who recorded the order of conviction. It is contended with justification that having regard to S. 12, Probation of Offenders Act, 1958, the punishment of dismissal from service which would disqualify him from future government service should not have been imposed. Section 12, Probation of Offenders Act, 1958 reads thus :

"Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of S. 3 or S. 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law :

Provided that nothing in this section shall apply to a person who, after his release under S. 4, is subsequently sentenced for the original offence."

Since it is statutorily provided that an offender who has been released on probation shall not suffer disqualification attaching to a conviction of the offence for which he has been convicted notwithstanding anything contained in any other law, instead of dismissing him from service he should have

been removed from service so that the order of punishment did not operate as a bar and disqualification for future employment with the Government. Under the circumstances, the impugned order of dismissal is converted into an order of removal from service. Subject to this modification the appeal fails and is dismissed. There will be no order as to costs.

Appeal dismissed.

AIR 1988 SUPREME COURT 286

(From : Punjab)

R. S. PATHAK, C. J. AND
M. N. VENKATACHALIAH, J.

Spl. Leave Petn. (C) No. 7977 of 1983 (with Writ Petn. (C) No. 5211 of 1983), D/- 20-11-1987.

M. K. Agarwal, Appellant v. Gurgaon Gramin Bank and others, Respondents.

(A) Regional Rural Banks Act (21 of 1976), S. 30 — Gurgaon Gramin Bank (Staff) Services Regulations 1980, Regn. 10 — Employee appointed on probation — Period of 18 months provided as maximum period of probation — Employer Bank neither discharging nor confirming employee — No statutory indication as to what should follow in such case — It could be held that there was implied confirmation.

The employee was appointed as Branch Manager. The period of probation was one year, in the first instance. The employer could extend it only for a further period of six more months. It was held that the limitation on the power of the employer to extend the probation beyond 18 months coupled with the further requirement that at the end of it the services of the probationer should either be confirmed or discharged render the inference inescapable that if the probationer was not discharged at or before the expiry of the maximum period of probation, then there would be an implied confirmation as there was no statutory indication as to what should follow in the absence of express confirmation at the end of even the maximum permissible period of probation. In cases where, these conditions coalesce, it has been held, there would be confirmation by implication. AIR 1968 SC 1210 and AIR 1986 SC 1844, Foll.

(Paras 4, 5)

(B) Constitution of India, Arts. 12 and 14 — Regional Rural Banks Act (21 of 1976), Ss. 3 and 30 — Gurgaon Gramin Bank (Staff) Services Regulations 1980, Regn. 10(2)(a) — Gurgaon Gramin Bank is "State" — Termination of service of employee by Bank — Regn. 10(2)(a) enabling termination simpliciter — Regulation confers arbitrary and unguided powers and is unconstitutional. C.W.P. No. 5003 of 1982, D/- 1-2-1983 (Punj & Har), Reversed.

The bank is constituted under the Regional Rural Banks Act 1976. Having regard to its constitution and nature of its legal entity and the measure of State control, it is an instrumentality of the State and is made of latter's own 'flesh and bones' and is accordingly 'State' within the meaning, and for purposes of Art. 12 of the Constitution. The Supreme Court dealing with the constitutionality of similar provisions which enabled governmental authorities such terminations simpliciter has held that the constitutional pledge of equality and the constitutional gurarantee against arbitrary action contained in Art. 14, frown upon conferment on the State or its instrumentalities such arbitrary power. AIR 1985 SC 722; AIR 1986 SC 1571 and AIR 1987 SC 111, Foll.

(Para 5)

It requires, therefore, to be held that impugned Regulation 10(2)(a) conferring as it does, on the Bank an arbitrary and unguided power is unconstitutional. Consequently, the order of purported termination of petitioner's services, which has for its foundation a provision which is unconstitutional would require to be quashed. C.W.P. No. 5003/1982 dt. 1-2-1983 (Punj & Har), Reversed.

(Para 7)

(C) Constitution of India, Arts. 32, 136 — Regional Rural Bank Act (21 of 1976), S. 30 — Gurgaon Gramin Bank (Staff) Services Regulations 1980, Regn. 10 —

sebaits are immortal. So, when all of them die, the list becomes useless, doing no duty, and even when some of them die, the list fails the very purpose for which it is made. That apart, the inviolability, contended for, comes to a head on clash with the provisions of the scheme approved by the Supreme Court and, therefore, beyond any manner of an attack by any one. Clause 6 is one such provision, as pointed out by my learned brother,—a provision which clearly lays down that the register of shebaits or list of sebaits, call what you may, shall have periodic amendments, necessitated by death, devolution and transfer sanctioned by law. The transfer of sebaiti interest for consideration is no doubt void: Prasanna Deb v. Bengal Duars Bank, Ltd., (1936) 64 Cal LJ 379 = (AIR 1936 Cal 744). But you cannot compel an unwilling sebait to continue as a sebait as held by Rankin, C. J. in Panchanan Banerjee v. Surendra Nath Mukerjee. (1929) 50 Cal LJ 382 = (AIR 1930 Cal 180). The transfer of sebaiti in favour of the remaining sebaits or surrender thereof affects no policy of Hindu Law, as pointed out by Dr. Bijan Kumar Mukerjea: Tagore Law Lectures on The Hindu Law of Religious and Charitable Trust at page 235.

52. But that is not for which I am adding this little to the judgment just delivered by my learned brother. Why I am doing so is to meet the contention raised by Mr. Bhattacharyya that a view as this on heritability and the like contravenes Cls. (b) and (d) of Article 26 of the Constitution which provide, in so far as it is material here for understanding Mr. Bhattacharyya's contention:

"* * * * every religious denomination or any section thereof shall have the right—

x x x x x x x

(b) to manage its own affairs in matters of religion;

x x x x x x x

(d) to administer such property in accordance with law."

such property meaning property, movable and immovable, any religious denomination or a section thereof may own or acquire: just what clause (c) of Article 26 prescribes.

53. How this freedom guaranteed by Article 26 to every religious denomination or a section thereof can avail the appellant beats us. The appellant has the freedom to manage his own affairs in matters of religion. His autonomy to decide what rites and ceremonies are essential according to the tenets of the Hindu religion he subscribes to — and these are all matters of religion — remains unfettered. Sure enough the scheme we see before us puts no fetters upon it. And sure enough again, the mode of representation to the Temple Committee and all that is not a matter of religion either. Article 26, Clause (b), of the Constitution, therefore, fails the appellant.

54. So does Clause (d) thereof. The property of Sri Sri Kali Mata Thakurani is being administered in accordance with mandate of the highest court of the ... such mandate itself being law binding ... us all.

55. The matter appears to be so ... from doubt or difficulty that it is ... necessary to refer to any authority. ... authorities there are.

56. Hence I am for dismissing the ... peal as my learned brother is, and in ... manner proposed by him.

Appeal dismi...

AIR 1970 CALCUTTA 384 (V 57 C ...

D. BASU, J.

Sunil Kumar Ghosh, Petitioner v. St... West Bengal and others, Opposite Par...

Civil Rule No. 1805 (W) of 1965, ... 29-5-1969.

(A) Constitution of India, Article 311 ... and Proviso (a) — Reasonable opportu... for delinquent — Words "criminal cha... in Proviso (a) — Meaning — Delinqu... convicted under Section 20, Police Act ... dismissed — Article 311 (2) Proviso (a) ... plies — Hence Article 311 (2) is in... cable.

The offence under Section 29, Police ... is created by a special statute. It is a cri... nal offence and a charge thereof is a "cri... nal charge" within the meaning of Art. ... (2) Proviso (a). Article 311 (2) there... does not apply to his dismissal based ... that conviction. The delinquent in such ... case cannot question an inquiry held und... Article 311 (2) on the ground that his ... vice records were referred to without not... to him. AIR 1966 Andh Pra 72 and AI... 1946 Mad 875 and AIR 1957 Punj 97 ... AIR 1959 Assam 134 and Salmond on To... 10th Edn. Pp. 2 and 7, Torts by Winfie... 7th Edn. Pp. 10 and 11, Outline of Cri... nal Law by Kenny, 16th Edn. P. 539 a... Criminal Law by Wilshare, 17th Edn. Pp... and 2, Foll. (Paras 18, 19, 22, and ...

(B) Constitution of India, Article 311 ... and Proviso (a) — Exemption from holdi... inquiry and giving opportunity under Ar... cle 311 (2) — Exemption is for benefit ... administration and is conducive to publ... interests — Government not estopped fro... claiming such exemption even after inquiry... (Evidence Act (1872), Section 115). Al... 1961 SC 619, Dist. (Para ...

(C) Constitution of India, Article 311 ... — Reasonable opportunity to delinquent — ... Police officer absenting from duty, dismis... — No suspension order passed — Notice fo... treating absence as leave without pay no... given — Extraordinary leave not sought — ... Earned leave due to delinquent — Perio... of absence till dismissal date cannot ... treated as extraordinary leave without ...

JM/DN/E895/69/JRM/C

— Delinquent entitled to full salary as if on duty. AIR 1968 SC 240, Applied. (Paras 27, 28 and 29)

Cases Referred: Chronological Paras

(1968) AIR 1968 SC 240 (V 55) = 1968-1 SCR 355, Gopalkrishna v. State of M. P. 28

(1966) AIR 1966 Andh Pra 72 (V 53) = 1966 Cri LJ 251, Re Nagabhushan 21

(1961) AIR 1961 SC 619 (V 48) = 1961-3 SCR 386, Akshaibar Lal v. Vice Chancellor 24

(1959) AIR 1959 Assam 134 (V 46), Jagadindsa v. I. G. of Assam Rifles 21

(1957) AIR 1957 Punj 97 (V 44) = 1956-30 ITR 423, Durga Singh v. State of Punjab 21

(1946) AIR 1946 Mad 375 (V 33) = 1946-1 Mad LJ 249, Venkatarama v. Province of Madras 21

Nani Coomar Chakraborty, Chittotosh Mukherjee and Jamini Kumar Banerjee, for Petitioner; B. C. Dutta and Murari Mohan Dutta, for Opposite Parties.

ORDER: This Rule raises a short but nice question of law,

2. I. That question, apart from others raised in the Petition (which will be dealt with hereafter) is—

2a. Whether 'conviction on a criminal charge', in Proviso (a) to Article 311 (2) of the Constitution includes conviction of a statutory offence.

3. The Petitioner, a Sub-Inspector of Police, was, at the material time, serving as a District Enforcement Officer of 24 Parganas. By an order of December 19, 1959, passed by the Supdt. of Police, he was transferred to Nadia with effect from January 2, 1960 and directed to undergo training in Finger-print (Annexure A to the Petition) from there. The Petitioner made representations during the pendency of which another order was issued by the Addl. Supdt. of Police (Enforcement) of 24-Parganas on March 22, 1960, by which he was asked not to discharge any duties as a Police Officer in the Dt. of 24-Parganas as he had been transferred away from the district with effect from January 8, 1960. As he did not still comply with the said order of transfer, a complaint was lodged against him, under orders of the Superintendent of Police, 24-Parganas for alleged offence under Section 29 of the Police Act, for violation of the order of transfer. This ended in the conviction of the Petitioner by the Magistrate, 1st Class, Alipore on November 25, 1961, and the Petitioner was sentenced to pay a fine of Rs. 100 or, in default to undergo simple imprisonment for one week. His appeal against this sentence was dismissed (Annexure F) and so was his application for revision to this Court, where it has been held that he was clearly guilty of violating the order of transfer to Nadia (Annexure H).

4. Thereupon on December 28, 1963, he was served with the charge-sheet at Annexure I. The Petitioner pleaded not guilty to the charge. There was a proceeding held upon the charge by the Superintendent of Police, 24-Parganas and on May 30, 1964, he recommended (Annexure N/1) that—

(a) The Petitioner be dismissed from service;

(b) His period of absence from duty from January 8, 1960 till the date of dismissal be treated as extraordinary leave without pay.

5. The Deputy Inspector-General of Police approved of the order proposed (Annexure O) and, in pursuance thereof, the order at Annexure P, dated July 2, 1964 was passed, dismissing the Petitioner with effect from that date on which a copy of the Deputy Inspector-General's order had also been served upon him. Annexure Q is an order of the Superintendent, asking for a return of the uniforms and appointment certificate in view of the foregoing order of dismissal.

6. The Petitioner challenges the orders at N/1 to Q on the ground, inter alia, that the requirements of Article 311 (2) of the Constitution have been violated in making the aforesaid orders inasmuch as the Petitioner was denied the opportunity of cross-examining witnesses at the inquiry held on the charge and his service records were taken into consideration to award the extreme penalty of dismissal, without giving him notice that they would be considered at the inquiry.

7. But, even assuming that the complaint of the Petitioner was true on facts, he cannot get any relief on the present ground if Proviso (a) is attracted, to exclude the operation of Clause (2) of Article 311 altogether. That clause provides for an inquiry on the charges at which the delinquent shall have an opportunity of being heard and thereafter to make a representation against the penalty proposed, where that penalty is dismissal, removal or reduction in rank of a person holding a civil post under the Government. There is no dispute as to a Police Officer holding a civil post under the State Government, so as to be entitled to the protection of Clause (2) of Article 311.

8. But the application of the entire Clause (2) of Article 311 is excluded by Proviso (a) which says—

"Provided that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge".

9. The Petitioner has been convicted of the offence under Section 29 of the Police Act for violating the order of transfer to Nadia. But it is contended on behalf of the Petitioner by Mr. Chakravarty, that the expression 'criminal charge' refers to charge of an offence under the general law of crimes and not to an offence which is commonly known as a 'statutory offence'.

9a. Section 29 of the Police Act, 1861 provides—

"Every police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any....lawful order made by competent authority.....shall be liable, on conviction before a Magistrate to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour for a period exceeding three months, or to both."

10. Obviously, this is not a charge of an offence included in the Indian Penal Code, which constitutes the general law of crimes in this country, but an offence created by a special statute, namely, the Police Act, to be met with by a statutory penalty. The question is whether this constitutes a 'criminal charge', which expression is not defined in the Constitution or in the General Clauses Act.

11. The question has, therefore, to be answered with reference to general principles.

12. The Dictionary meaning of the word 'charge' in the legal sense is 'accusation'. 'Criminal charge', therefore, would mean accusation of a 'crime'. The Dictionary meaning of the word 'crime', again, is an 'act punishable by law' (Shorter Oxford Dictionary). To punish means to 'inflict penalty on an offender'. If these Dictionary meanings prevail, any offence which is created by any statute and is punishable by any penalty imposed thereby would be included within the concept of a 'criminal charge'.

13. The most common way adopted by leading treatises is to define crimes by distinguishing them from civil wrongs. In Salmond on Torts (10th Ed., p. 7), the distinction is drawn as follows:

"The distinction between civil and criminal wrongs depends on the nature of the appropriate remedy provided by law. A civil wrong is one which gives rise to civil proceedings—proceedings, that is to say, which have as their purpose the enforcement of some right claimed by the plaintiff as against the defendant: for example, an action for the recovery of a debt....Criminal proceedings, on the other hand, are those which have for their object the punishment of the defendant for some act of which he is accused. He who proceeds civilly is a claimant, demanding the enforcement of some right vested in himself; he who proceeds criminally is an accuser, demanding nothing for himself but merely the punishment of the defendant for a wrong committed by him".

14. The element of punishment as the differentia of a crime is also emphasised by Winfield (Torts, 7th Ed., 10-11) and Kenny [(Outline of Criminal Law (16th Ed., p. 539)]. In some cases, of course, criminal law provides for payment of monetary compensation by the convicted person to the person injured; but even in those cases compensation is awarded in addition to punishment.

15. Quoting observations in the Wilshere (Criminal Law, 17th Ed., p.) explains the essential characteristics crime as follows:

"The essential characteristic of a c offence is that it entails a liability to ment: the domain of criminal jurisp can only be ascertained by examin acts at any particular period are d by the State to be crimes, and the common feature that they will be fo possess is that they are prohibited b State and that those who commit the punished".

16. The old distinction between prohibita and mala in se has broken because many acts which have been punishable as an offence by statutes do involve any moral turpitude:

"In particular, nothing in the moral racter of an act or omission can distin it from a civil wrong or make it a cri offence. There are, for example, breaches of statutory regulations and laws which, because they are punishabl criminal proceedings, must be class criminal offences though they do no volve the slightest moral blame, as, for ample, 'the failure to have a proper on a bicycle....' (Salmond, ibid).

17. But a statutory offence should be a criminal offence "unless the pu ment is inflicted as a result of criminal ceedings" (p. 2; ibid.), i. e., in a proc before a criminal court.

18. Judged by the foregoing tes offence under Section 29 of the Poli is a criminal offence and the charge o an offence is a criminal charge bec

(a) By the statute, violation of du wilful breach of any order made by a tent authority has been prohibited and punishable by fine or imprisonment o

(b) The offence is triable before a trate, i. e., a criminal court.

(c) The proceeding is a criminal ing because the object of the proceed the enforcement of some right to any complainant or person injured act but the punishment of the Police Officer, and it started with cution (Annexure D/1).

19. Consequently, the instant fall under the purview of Provi Article 311 (2) of the Constitu conclusion arrived at by me is ported by the interpretation so by the High Courts to that claus

20-21. It has been held that Conviction on a criminal this clause includes conviction law which provides for punishm offence, whether by fine or im [In re Nagabhushan, AIR 1966 /2], and that no distinction is m clause between crimes involving m

tude and other crimes [Venkatarama v. Province, of Madras, AIR 1946 Mad 475; Durga Singh v. State of Punjab, AIR 1957 Punj 97; Jagadindra v. I. G., AIR 1959 Assam 134.] AIR 1957 Punj 97 ibid., was a case of conviction of the offences specified in Section 34 of the Police Act, and is thus directly to the point.

22. I have no doubt, therefore, that Clause (2) of Article 311 was not attracted to the present case and that, accordingly, no opportunity to be heard or inquiry was to be held before dismissing the Petitioner on the ground that he had been convicted under Section 29 of the Police Act.

23. II. In view of the foregoing finding, it is not necessary to go into the question whether an opportunity was actually given to the Petitioner. Nevertheless, I may observe that a proceeding was actually held by the Superintendent of Police before proposing to dismiss the Petitioner, but that the Petitioner could not avail of the opportunity to make his submissions against the punishment proposed, owing to his reclacitrant attitude and misconception about his legal position.

24. III. It was contended that after proceeding to hold an inquiry, Respondents cannot fall back upon the Proviso (a) to Article 311 (2) and in this connection reliance is placed upon the Supreme Court decision in Akshaibar Lal v. Vice Chancellor, AIR 1961 SC 619. But that was a case where two alternative procedures were provided for by the relevant statutory provisions and it was held that after resorting to a general provision, the authority could not be allowed to take resort to the more stringent provisions of the special procedure. That principle cannot apply to a case like the instant one where the constitutional provision itself says that no inquiry need be held and no opportunity need be given. This exemption is for the benefit of the administration and conducive to public interests, which cannot be forfeited by the administration by estoppel. This contention must, therefore be rejected.

25. IV. It was next contended that the impugned order is bad because it does not give the reasons, as required by Reg. 864 (b) of the Police Regulations as to why some punishment other than dismissal could not be awarded because the convictinn did not involve moral turpitude. But reasons have in fact been given, namely, the service career of the Petitioner, having 22 punishments as against 5 rewards. Hence, this contention must be rejected.

26. The incidental argument that the service records were referred to without giving notice to that effect to the Petitioner would also not succeed because Art. 311 (2) is not applicable, as held by me.

27. V. We now come to the claim for salary from January 2, 1960 to July 2, 1964, i. e., up to the date of dismissal. On this point, the Petitioner is entitled to succeed because there was admittedly no order of suspension passed against him at any time.

28. It is true that he absented himself from duty, but even then there was no notice given to him that his absence would be treated as leave without pay if he did not join at once. Even when his prayer for casual leave was rejected, no such order was communicated to him [Annexure 6/1]. In Gopalkrishna v. State of Madh Pra., AIR 1968 SC 240, the Supreme Court has held that no order under F. R. 54 of the Fundamental Rules could be made without affording an opportunity to the person to be affected, of being heard on this matter specifically. The same principle should be applicable to the grant of leave without pay when the Petitioner did not ask for extraordinary leave and earned leave for some period was actually due to him (vide para. 24 of the Petition), which was not rebutted.

29. In this view, the Rule will be made absolute in part, to this extent only that Respondents shall be commanded to pay to the Petitioner his full emoluments for the period from Janurry 2, 1960 to July 2, 1964, as if he were on duty. There will be no order as to costs.

Petition partly allowed.

AIR 1970 CALCUTTA 387 (V 57 C 70)

S. K. CHAKRAVARTI AND
ANIL K. SEN, JJ.

Mazirannessa alias Mizirannessa Bibi, Appellant v. Khondakar Golam Kibria and others, Respondents.

A. F. A. D. No. 998 of 1968, D/- 17-3-1969.

Mahomedan Law — Inheritance — Husband and wife — One spouse can inherit other also in some other capacity.

There is nothing in Mahomedan Law to prevent a husband or a wife inheriting the other spouse's property in some other capacity. The rule that neither the husband nor the wife is entitled to the Return, so long as there is any other heir, does not preclude the husband from inheriting the residue as a distant kinsman.

(Paras 6, 7, 9 and 10)

Sudhir Kumar Acharya and Amal Chandra Chatterjee, for Appellant; Prasanta Kumar Bandyapadhyaya, for Respondent No. 1.

S. K. CHAKRAVARTI, J.: An interesting point under the Mahomedan Law arises for determination in this second appeal. It is as to whether a husband is entitled to inherit from his wife both as husband and as a distant kinsman.

2. The properties in dispute belonged to one Makdunnessa who died in Ashar 1357 B. S., and was survived by her husband Bechu. On the death of Makdunnessa,

The facts of the Bombay case ...

... Jev Shah J. the primary question ... examination in that application was ... ment of Wages Authority had juris... ...tion the application made by the ... pleading that he should not have been ... a Brush painter under the Notifica... ...rd December 1948, and that he should ... ...ual wages fixed under the earlier Noti... ... 31st December, 1947.

... he question of any re-classification by ... Notification in the present case. ... ...ed that even in the Bombay case the ... their Lordships of the Supreme Court ... ...d and followed and the decision was ... ...ght of the judgment of the Supreme

... present case the petitioners rely on par... ...ments which form the basis of the con... ...en the parties and the case of the rail... ...at the petitioners are not entitled to the ... embodied in the documents in question. ... only as a matter which would be wi hin ... ...tion of the authority under the Act to

... ...ever, the deduction of pay is admitted ... ...is that the petitioners are entitled to ... It seems to us that where certain wages ... admittedly paid and then the employer ... wages at a lower scale the question ... ...as to whether the employer is entitled ... that reduction or deduction and this has to ... ...d by the authority.

... ...uch contract of service at a reduced rate ... ...been brought to our notice and it ... ...be a unilateral act on the part of the rail... ...which the wages were reduced and the ... ...authorities insisted on making payment at a ... ...rate. All these are matters which must ... ...the authority under the Payment of ... Act to decide.

... ...the result it must be held that the ques... ...matter in this matter fall within the juris... ...of the authority constituted under the Pay... ...Wages Act and the reduction in wages in ... ...circumstances mentioned before falls within the ... ...duction in wages."

... This petition will now be placed before a ... Single Judge for disposal in accordance

Reference answered accordingly.

AIR 1959 PUNJAB 169 (V 46 C 54)

A. N. GROVER, J.

... ...ram Pheena, Petitioner v. Divisional ... ...ent Northern Rly. New Delhi and ... Respondents.

... ...Writ No. 591 of 1957, D/- 16-9-1958.

... Constitution of India, Art. 311 (2), Proviso ... Conviction on criminal charge — Conviction ... ...under Ss. 120 and 121, Railways Act — ... Act (1890), Ss. 120 and 121).

... 'charge' in Art. 311 (2), Proviso (a) ... ...some accusation and not merely a ... technical sense of the Code of Crimi... A charge under Ss. 120 and 121, ...on which a person is convicted falls ... proviso as the offences covered by the ... ...tions can be regarded to be criminal in ... which that expression is used in the ... AIR 1946 Mad 375 Rel. on. (Para 2)

(b) Railways Act (1890), S. 47 — Rules under — Appendix 'A', Part II, R. 21 — Applicability.

Rule 21 only refers to a breach of the rule ... and can have nothing to do with any conviction ... under the substantive provisions of the statute, ... namely, sections 120 and 121 of the Railways Act. (Para 3)

Anno: AIR Man. Railways Act, S. 47, N. 1.

Cases referred: Courtwise Chronological Paras

('46) AIR 1946 Mad 375 (V 33) : 226 Ind Cas 81, Venkatarama Nayadu v. Madras Province 2

Jai Kishan Khosla, for Petitioner; F. C. Mittal, for Respondent No. 1.

ORDER.—This is a petition under Article 226 of the Constitution by a person who was employed as a sweeper in the Railways. On 13th December, 1955 he pleaded guilty to charges under Sections 120 and 121 of the Indian Railways Act and was convicted by Magistrate First Class and directed to pay a fine of Rs. 10/- under Section 120 and Rs. 25/- under Section 121 of the Act. In default he was to undergo simple imprisonment for seven days and two weeks respectively.

A departmental enquiry was held and thereafter the petitioner was dismissed from service by the competent authority. The reason given for his dismissal was that he had been convicted by a Court of Law. The petitioner appealed against the order of dismissal to the officer concerned. That appeal, however, failed. He filed a further appeal to the Chief Commercial Superintendent, but the same was also dismissed.

(2) The main point that has been raised on behalf of the petitioner is that he was dismissed from service in violation of the provisions of Article 311 of the Constitution. It is, however, clear from the proviso to Article 311(2) that the protection of the aforesaid clause cannot be claimed by a person who is dismissed on the ground of conduct which had led to his conviction on a criminal charge.

It is contended that the charge on which the petitioner was convicted being under Sections 120 and 121 of the Indian Railways Act, could not be regarded to fall within the above proviso, as the offences covered by the aforesaid sections could not be regarded to be criminal in the sense in which that expression is used in the proviso, appearing in Article 311. It is not possible to accept this contention. An identical point came up for consideration before Byers J. in Venkatarama v. Madras Province, AIR 1946 Mad. 375, a case in which the proviso in Section 240(3) (a) of the Government of India Act had to be examined.

The learned Judge has observed that the way in which the word 'charge' has been used obviously contemplates some accusation and not merely a charge in the technical sense of the Code of Criminal Procedure. In that case a person had been convicted of Contempt of Court & it was held that although an offence of that nature might not fall within the narrow limits of the offences in the Penal Code, it was nevertheless a matter giving rise to a criminal charge within the meaning of the proviso in Section 240(3) (a).

It was held that as the dismissed official had been convicted on a criminal charge the formalities regarding notice and a reasonable opportunity of showing cause were not necessary to be complied with. With respect, I agree with the view of the learned Madras Judge and hold that in the present case it was not necessary to comply with the mandatory provisions of Article 311(2) of the Constitution.

(3) Mr. J. K. Khosla, who appears for the petitioner, has raised another point. He has invited my attention to Rule 21 appearing in Part II of the rules in Appendix 'A' framed in pursuance of Section 47 of the Indian Railways Act. This rule is in the following terms:

"Any person other than a railway servant committing a breach of any of the rules in this Part shall, on conviction before a Magistrate, be punishable with fine not exceeding fifty rupees; and any railway servant committing such breach shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the Railway Administration from his pay."

Mr. Khosla contends that the petitioner on his conviction was liable to forfeiture of one month's pay and this penalty having been specifically prescribed no question of his dismissal arose and the penalty of dismissal could not have been imposed upon him. The argument that has been raised is wholly baseless and without any force. Rule 21 refers specifically to "breach of any of the rules in this part."

This has reference to Part II of the rules which begin with the Chapter entitled 'Carriage of Passengers' and ends with Rule 20 in Chapter II. Rule 21 appearing in Chapter III which appears in Part II governs the breach of only those rules which appear in Chapters I and II of Part II of the rules. Moreover, Rule 21 only refers to a breach of the rules and can have nothing to do with any conviction under the substantive provisions of the statute, namely, Sections 120 and 121 of the Act.

(4) For the reasons given above this petition fails and is dismissed. I, however, leave the parties to bear their own costs in this Court.

G.M.J. Petition dismissed.

AIR 1959 PUNJAB 170 (V 46 C 55)

K. L. GOSAIN AND HARBANS SINGH, JJ.

Janardhan Bhagwan Dass, Appellant v. Sham Lal Nand Lal and others, Respondents.

First Appeal No. 222 of 1951, D/-27-8-1958, from Preliminary decree of Sub. J., 1st Class, Hoshiarpur, D/-3-7-1951.

(a) Transfer of Property Act (1882), Ss. 92, 60 — Co-mortgagor redeeming whole mortgage — Rights of other co-mortgagors.

The provisions of S. 92 of the Transfer of Property Act do not apply to the Punjab. A co-mortgagor who has redeemed the whole mortgage cannot be taken to have been subrogated to all the rights of the original mortgagees because he can in no case be regarded to hold a mortgage at least on his own share of the mortgaged property. By redeeming the previous mortgages the Co-mortgagor became entitled to reimbursement of the amount paid by him in respect of the shares of the other co-mortgagors and succeeded to the rights of the previous mortgagees only to this extent. It will be in accord with the principles of justice, equity and good conscience that each of the other mortgagors may redeem his share of the property by payment of the proportionate amount actually paid by the redeeming Co-mortgagor. The integrity of the original mortgages is no longer in existence. It will be in accordance with the principles of justice, equity and good conscience to allow the other Co-mortgagors to redeem their share of the property on payment of the proportionate amount of the mortgage money. Case Law discussed. (Paras 5, 7)

Anno: AIR Com. T. P. Act, S. 92, N. 4, 15, S. 60, N. 46.

(b) Transfer of Property Act (1882), S. 92 — Rights of subrogee.

The subrogee cannot, according to the rules of justice, equity and good conscience as applicable in the Punjab, claim anything more than what he has himself paid. AIR 1933 SC 1 Foll.

Anno: AIR Com. T. P. Act, S. 92, N. 4. (Para 6)

Cases Referred: Courtwise Chronological Paras

('53) AIR 1953 SC 1 (V 40): 1953 SCR 243, Ganeshi Lal v. Jotti Pershad 3

('23) AIR 1923 Lah. 129 (V 10): 69 Ind Cas 653, Ali Akbar v. Sultanul-Mulk 3

('41) AIR 1941 Lah. 421 (V 28): 197 Ind. Cas 626, Phula Singh v. Harnaman 3

('34) AIR 1934 Oudh 348 (V 21): 150 Ind Cas 140, Sarfaraz v. Mohammad Salim 3

F. C. Mital and G. P. Jain, for Appellant; D. N. Aggarwal and R. N. Aggarwal, for Respondents.

JUDGMENT.—The relationship between the parties to the present case is clear from the pedigree-table given below.

(See pedigree table on page 171)

(2) The parties owned considerable landed property, some of which was ancestral and the other non-ancestral. In 1902 Lal Chand, Bhagwan Das and Beli mortgaged 30 kanals and 11 marlas of land which Kalu Mal and others with possession for a sum of Rs. 2,000/-. In 1904 Lal Chand, Bhagwan Das, Beli and the sons of Numan made a simple mortgage of another 88 kanals and 15 marlas of land for a sum of Rs. 2,000/- in favour of the same mortgagees.

In 1906 the second mortgage was also converted into a usufructuary mortgage with the result that the mortgagees came into possession of the entire land covered by both the mortgages and measuring 139 kanals and 6 marlas. From 1914 to 1932, fifteen additional charges were created on the aforesaid land by documents, Exhibits D. 3 to D. 17, and the total amount covered by the aforesaid fifteen additional charges came up to Rs. 11,183/-.

The mortgagors made an application to the Collector for redemption of the mortgages under the Redemption of Mortgages (Punjab) Act, which for reasons with which we are not now concerned, the said application was dismissed. In the year 1947 a suit for redemption was filed by all the [illegible] branches of Gobind Ram and on the 10th July 1948, a preliminary decree was passed for redemption on payment of Rs. 25,339/11/3 on or before the 14th of January, 1949.

Janardhan, defendant No. 1, alone paid the entire amount by depositing Rs. 10,000/- on the 14th of January, 1949, and the balance on the 15th of January, 1949. On the 11th of March, 1949, a final decree for redemption was passed in favour of the mortgagors. In execution of the decree Janardhan, defendant No. 1, got the possession of the entire land. Sham Lal and Salig Ram plaintiffs in the present case, then brought an application for redemption of their share of the mortgaged property but the same was dismissed by the Collector for reasons with which we are not now concerned in the present case.

The present suit was brought by Sham Lal and Salig Ram on the 16th of January, 1951, for redemption of their one-fourth share in land described in para. (ahf) of the heading of the plaint and one-third share of land described in para. (bcf) of the heading of the plaint. The plaintiffs alleged that they were entitled to the redemption of their said shares on payment of Rs. 5,879/2/8, being mortgage money of their share.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Civil Misc. Appn. No. 8933(W) /1984

Uma Shanker Misra ..... Applicant

In Re:

Writ Petition No. 4954 of 1983

Uma Shanker Misra ..... Petitioner

Vs.

Union of India & Others ..... Respondents

APPLICATION FOR AMENDING WRIT PETITION

1. That the petitioner has filed the above cited Writ Petition challenging the validity of the order passed by the Respondent No. 3 as contained in Annexure No. 4 to Writ Petition whereby the respondents have dismissed the petitioner from the services of the department with effect from 17.6.1980.

2. That no show cause notice as required under Rules 14 to 18 and 19(i) of C.C.S.C.C.S Rules 1965 was served upon him. These rules specifically provide notice to be served upon the person so that the person against whom some order is to be passed shall be in position to defend himself.

3. That feeling aggrieved by the abbitrary order pssed by the respondent no. 3,,the petitioner preferred an appeal before the respondent no. 2 through the Superintendent, District Jail, Luckrow as contained in Annexure No. 6 to Writ Petition.

4. That the petitioner filed detailed reminder/reoresentation on 15-5-81 and again filed detailed reminder/reoresentation dated 26-3-83 as contained in Annexure No. 8 &9 to Writ Petition

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contd...2

respectively annexing all his previous appeal/representations already filed beofre the respondent No. 2. Also petitioner submitted notice under section 80 CPC as contained in Annexure No..XIV to the Writ Petition.

5. That the respondents have always informed the petitioner whenever he met as the specific averments made in Para 23 to the the Writ Petition. The petitioner was told that he is an outside-r hence no reply can be given to him.

6. That the petitioner under constraint filed the present Writ Petition as the Department was neither cancelling his dismissal order nor deciding his appeal.

7. That the above Writ Petition was admitted by this Hon'ble Court on 20-9-83 and the respondents were directed to file the counter Affidavit. Thereafter on several occasions the case was listed and the respondents counsel sought the time for filing counter Affidavit.

8. That on 6-4-1984 Hon'ble Mr. Justice K.Nath was pleased to pass the order allowing 4 weeks time to the respondents to file the counter Affidavit and also specifically stated in the order as this to be the last opportunity for respondents to file the counter Affidavit as no further time will be allowed to them.

9. That despite the court order dated 6-4-84 the respondents preferred not to file the Counter Affidavit in the Writ Petition even after the expiry of 4 weeks time and till this dated.

10. That the respondent No. 2 vide his order No. ST-QF/Appeal/USM/17 dated 2-5-84 decided the appeal of the petitioner filed before him from ~~jail~~ jail dated 2-8-80 and reminder/representations susbequently submitted. It is submitted that the respondent No. 2 have dismissed the petitioners appeal ignoring

contd...3

(A125)

the expressed provisions for issuing notice to the person concerned before passing any dismissal order, so that the person concerned may be in a position to defend himself.

11. That in view of the fact that the appeal have been decided the above cited Writ Petition needs amendments to be incorporated in that regard in the following manner :

12. That paragraoh 23 the following may be added :

(23(a)) That the respondent No. 2 have communicated the decision taken on the petitioner's appeal filed before him vide letters as contained in Annexures No. 6, 8, 9, 11 & 12 to the Writ Petition on 2-5-84 which was received by the petitioner on 5-5-84. Whereby the respondent No. 2 have upheld the decision taken by respondent No. 3 to dismiss the petitioner from services of the Department, in view of petitioners conviction in ~~civil~~ criminal case No. 250/1973 of Session Court and ~~civil~~ criminal case No. 327/1974 of Hon'ble High Court. A true copy of the decision communicated by the Appellate Authority is annexed herewith as Annexure No. 15 to the Writ Petition. It is further submitted that the petitioner has also filed appeal/representation regarding his illegal suspension order which is still pending with respondent No.2 and no decision has so far been communicated to the petitioner, which have been annexed in Writ Petition as Annexures marked 10 & 13.

(23(b)) That the petitioner submits that the Appellate Authority have failed to take notice of the specific provisions contained in C.C.S.CC & A Rules 1965 whereby it is obligatory on the respondent to serve the notice showing cause to the petitioner as to ~~wh~~ why the action should not be takenagainst the petitioner.

(23(c)) That the learned Appellate Authority erred in holding that the petitioners conviction costs moral turpitude and in the circumstances his retention in the department is not desirable.

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A126

It is ~~admitt~~ submitted that the finding of the Appellate Authority is against the settled Law as propounded by the Supreme Court of India in its various decisions.

13. That in the grounds mentioned in the Writ Petition after ground No. 18 the following grounds may be added in Writ Petition as under :

(19) Because the impugned order contained in Annexure No. 15 to the Writ Petition is against the Law propounded by the Supreme Court of India with regard to the cases falling under the category of moral turpitude.

(20) Because the learned appellate authority failed to appreciated the fact that the respondent No.3 had no occasion to have all the material facts before him without affording the petitioner the opportunity to place the same before him.

(21) Because the learned appellate authority cannot remove the inherent illegality of the order passed by the respondnent No. 3 as contained in Annexure No. 4 to the Writ Petition.

(22) Becuase the learned appellate authority had no jurisdiction whatsoever to add in the order of respondent No.3 by adjucating himself for the first time on some issues.

(23) Because the petitioner was dismissed from the services without affording any opportunity to show cause and in the circumstances the order contained in Annexure No. 4 to Writ Petition is illegal.

~~14. Issue Writ, order or direction in~~

14. That in the prayer the following prayer may be incorporated after prayer No.6 in Writ Petition as under :

(7) Issue Writ, order or direction in the nature of certiorari quashing annexure No. 15 to Writ Petition.

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15. That it is expedient in the interest of justice that above mentioned amendments be allowed to be incorporated in the Writ Petition.

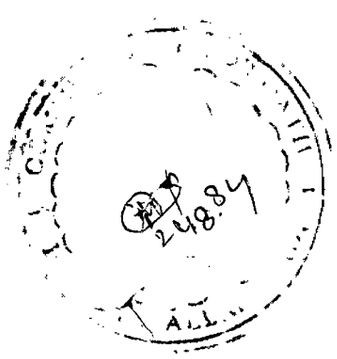
PRAYER

Wherefore the petitioner most humbly prays to this Hon'ble Court that it is expedient in the interest of justice that the above mentioned amendments may be allowed to be incorporated in Writ Petition and as duty bound. The applicant shall ever pray.

PETITIONER
ADVOCATE
COUNSELF FOR THE PETITIONER

LUCKNOW

DATED : August 24 ,1984



Annexure No. 15

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH, LUCKNOW

W.P. No. 4954/1983

INDIAN POSTS & TELGRAPHS DEPARTMENT
Office of the District Manager Telephones, LW.

No. ST-QF/Appeal/USM/17 Dated 2.5.1984

This is regarding appeal of Shri U.S.Misra, Ex.TSC.

Shri Misra has furnished the following documents:-

(1) Appeal dated 15.5.81 addressed to GMT, UP Circle, Lucknow and copy endorsed to DMT, Lucknow.

(2) Application dated 23.3.83 addressed to Shri A.K.Gupta, ~~D.M.~~ D.M.I., Lucknow.

(3) Application dated 25.6.83 addressed to Shri S.C.Misra, the then DMT, Lucknow.

(4) Application dated 25.6.83 addressed to Shri S.C.Misra, the then DMT, Lucknow.

Brief History of the case

Shri Uma Shanker Misra, Ex.TSC, who was appointed on 30.12.55, was placed under suspension w.e.f. 19.1.73 in connection with a criminal case. The official having involved in the criminal case was convicted under Section 302 IPC and 4[illegible]9 and sentenced for life imprisonment and 5 years R.I. by Shri R.N. Sinha, second temporary Civil Session Judge, Lucknow. Shri Misra, then went in appeal in High Court against the aforesaid orders of Shri Sinha. The Hon'ble justice High Court Bench, Lucknow, while deciding his appeal on 8.11.78 ordered for his conviction under Section 304 part I and sentenced him to a term of 7 years R.I. and a fine of Rs. 2000/- and in default thereof to go further R.I. of 3 years.

In view of the above judgement, the Disciplinary Authority D.E.P.II, after going in details, dismissed Shri Uma Shanker Misra Ex.TSC, as per rule 12(2)(a) of CCS (CCA) Rules, 1965, and also instructions contained in Rule 14(B)(5)2(i) and Rule 19(1).

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Later it was on 15.5.81 Shri Misra (while on parole) addressed to GMT, UP Circle, Lucknow, endorsing a copy thereof to DMT, Lucknow, In this explanatoryletter, Shri Misra has also stated to have sent an appeal dated 2.8.80 from District Jail (Becuase he was undergoing the punishment). It may, however, be made clear that the appeal dated 2.8.80, stated to have been sent through Jail Authorities has not been received in this office and therefore, is not on record.

Thereafter, on 23.3.83, Shri Misra submitted another application in continuation to the above two letters. This application was, hoever, more eloborate wherein the citations of several High Court decisions were quoted.

Grounds of appeal

In his application dated 2.8.80 (not yet received from the Jail Authorities) and 15.5.81 the official had simply prayed as detailed below:-

Points raised in appeal dated 2.8.80 (not yet received):-

(1) The case being out of office compound where moral terpitude is not involved and hence the act of the official cannot be termed as sufficient grounds for this dismissal.

(2) That only one punishment can be awarded to him

Points raised in explanatory reminder dated 15.5.81

(1) The incident occurred outside the compound and therefore the Disc. Authority merely on the basis of judgement of the two court, cannot pass the orders of dismissal as also the moral terpitude of the official is not involved.

(2) Sufficient opportunity as provided under the Comstitution to Articel 311 were not explored to the official.

(3) That after having undergone the punishment awarded by the court, the official having enough education to his credit be restored to the employment for his bread and butter by showing the mercy by the Disc. Authorities and

Appellate Authority.

Points raised in his application dated 23.3.83

Besides the points already indicated above, the official categorically pressed the points for 'Not serving the show cause notice' to the official before passing the dismissal orders by the Disc. Authority and for the reasons, the said Shri Misra cited certain decisions of the various courts. He also invited to the attention of the appellate authority to D.G's instructions contained in his letter No. 113/96/80-Disc. II dated 19.8.80 which inter-alia prescribed that.

> ' The Disc. Authority should embarkupon a summary enquiry in order to emable it to determine the quantum of penalty to be imposed for this purpose, the emoloyees concerned should be given hearing. This does not mean that an elaborate enquiry should be held what is required to be done is to hold a skeleton enquiry for which the judgment of the court convicting the employee concerned on criminal charge will itself form the basis, and impose a penalty after issuing a show cause notice.'

FINDINGS

I have gone through this case at length and before coming to any conclusion, have examined the following documents/records.

(1) Disc.case file of the official leading to his dismissal

(2) The two judgements of the Civil/High Court.

(3) The applications dated 15.5.81 (Appeal dated 2.8.80, which has not been received in my office but is an enclosure to the explanatory reminder dated 15.5.81).

(4) Application dated 23.3.83 (also a legal notice addressed to the undersigned).

(5) Application dated 25.6.83 addressed to Shri S.C.Misra, the then DMT, Lucknow.

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(A131)

The observations after going through this case and relevant documents are:-

(1) The appeal dated 2.8.80 stated to have been sent to DMT Lucknow through Jail Authorities has not been received in this office is therefore not on the record.

(2) His application dated 15.5.81 is addressed to GMT Lucknow instedd of DMT Lucknow who is appropriate authority and only a copy of this explanatory reminder (in which a mention of his appeal dated 2.8.80 forwarded from Jail Authorities) exists.

(3) His application dated 23.3.83 addressed to the undersigned is merely a reminder to his earlier letters dated 15.5.81

(4) His application dated 25.6.83 addressed To Shri S.C.Misra the then DMT Lucknow is also a sort of reminder.

And, therefore, the apoeal of the official did not reach the office so far except the explanatory reminder dated 15.5.81 which was not addressed to the apropriate appellate authority in this case.

However taking a lenient view as the capital punishment had awarded by the Disc. Authority in this case, and assuming all the aforesaid applications to constitute an appeal into this case, so as to afford the appellant the possibilities of the 'Natural Justice' his grounds of appeal have been considered with the following comments.

(1) The appellant's contention that the incident relating to outside office premises does not in any way place him for the act done below the normal terpitude, is wholly incorrect as also the official pleaded him not guilty before the Lower Court and High Court. But in both these courts the Hon'ble Judges observed that Shri Uma Shanker Misra was guilty of the allegations levelled against him and that an act leading to the death of a man, can under no circumstances be deemed not involving moral terpitude and therefore the undersigned disallows his ground put forth in his appeal.

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(2) That within the meaning of the Constitution Art. 311, the Disc. Authority as per orders/rules in force was competent to proceed as such Art.311 of Constitution 2(a) then provided.

Rule (2)- No such person as aforesaid be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given opportunity of being heard in respect of those charges.

Provided further that the clause shall not apply:-

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge -- or'

And thus the Disc. Authority, after careful examination of the two judgements and other aspects in detail dismissed the official under rule 19(1) as by then no instructions as has been indicated in his appeal, from the Directorate, New Delhi, has been received. To add elaboratedly, it may be stated that the instructions for show cause notice to the official were issued on 19.8.80 vide DG P&T New Delhi Memo No. 113/96/80-Disc. II dated 19.8.80, while the dismissal orders were caused by the Disc. Authority on 17.6.80 and thus the action taken by the Disc. Authority in view of the rules ~~to~~ then force, was in order and leaves no chance of lacuna.

Order

I, A.K.GUPTA, beirg the appellate authority, therefore, considering all the points raised by the appellant and within the framework of the rules find that there isno force in his appeal and, therefore, no merciful order can be passed except that his appeal, in the circumstances stated above is rejected.

Sd/-

(A.K.GUPTA)
District Manager Telephones,
Lucknow
Appellate Authority

2.5.1984

Regd.

Shri Uma Shamker Misra, Ex.TSC, P&T Quarter No.9/1, Malviya Nagar, Lucknow.

716 (AB23)

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW.

1984
AFFIDAVIT
96/915
HIGH COURT
ALLAHABAD

COURT FEE 1 Rs. भारत INDIA एक रुपया ONE RUPEE M.W.H.C.3

COURT FEE 1 Rs. M.W.H.C.3

Affidavit in Civil Misc. Appn. No...../1984

Uma Shamker Misra .....Deponent

In Re : Writ Petition No. 4954/1983

Uma Shanker Misra ..... Petitioner

Vs.

Union of India & others ..... Respondents

I, Uma Shanker Misra aged about 48 years S/O Late Shri R.K.Misra R/O PT 9/1 Malviya Nagar, P.S.Khala Bazar, Lucknow do hereby solemnly affirm and state as under :

1. That the deponent is the petitioner in the above cited Writ Petition and is fully conversant with the facts as deposed in the amendment application.

2. That the contents of Paras 1 to 12 of the amendment application are true to the knowledge of the petitioner.

3. That the contents of Para 15 of the amendment application are believed tobe true by the petitioner and Annexure 15

COMMISSIONER FOR OATH HIGH COURT ALLAHABAD 24.8.84

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उमा शंकर मिश्र

2/7 (1034)

as mentioned in application is the true copy of the original.

उमाशंकर मिश्र

LUCKNOW
DATED : AUGUST 24, 1984

DEPONENT

VERIFICATION

I, the above named deponent, do hereby verify that the contents of Paragraph 1 to 3 are true to my knowledge. No part of this affidavit is false & nothing material has been concealed. So help me God.

उमाशंकर मिश्र

LUCKNOW
Dated : August 24, 1984

DEPONENT

I, identify the Deponent who has ~~sig~~ signed before me.

Solemnly affirmed before me on 24.8.84 at 9.40 AM/~~PM~~ by Shri U.S.Misra who is identified by Shri P.K.Sinha ....., Advocate, High Court, Lucknow. I have satisfied myself by examining the Deponent that he understands the content of this affidavit which has been read out and explained by me.

Meena Pandey
OATH COMMISSIONER
High Court, (Lucknow Bench)
LUCKNOW
No 96195
Date 24.8.84

उमाशंकर मिश्र

Main Copy

In The Central Administrative Tribunal, Circuit Bench, Lucknow.

T.A. No. 1477-T- of 86

Umashankar Misra.. ..Applicant.

Vs.

Union of India & oths.. ..Respondents.

Reply by Applicant to the Written Brief of Arguments submitted by Respondents on 22.2.1990.

Duplicate despatched to Sri Ashok Mohiley Advocate, under R.D No. 64 Dt. 28.1.90 HC Bench Rent office.
28/1/90.

May it Please Your Lordships,

It is humbly submitted that on 22.2.90 at the time of arguments Respondents submitted written brief of their arguments to which applicant replies as under:-

1. Case decided by Hon'ble Supreme Court known as Union of India Vs. Tulsi Ram Patel reported in 1985 (3) SCC 398, = AIR 1985 SC 1416 = 1985 LIC 1393 has been relied upon and referred from both the sides. Subsequent 1988 decision of Hon'ble Supreme Court as referred by Respondents in para 6 of their written brief also refers to Tulsi Ram's Case. Prior to decision in Tulsi Ram's case the view of Challappasin's case AIR 1975 SC 2216 = 1976 (1) SCR 783 = 1976 SLJ 8

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A436

was prevailing. In Tulsi Ram's case challapanis case has been partly overrulled and not fully.

In concluding part of para 114 of Tulsi Ram's case Hon' Supreme Court has held "Undoubtedly the Disciplinary Authority must have regard to the facts and circumstances of the case as set out in challapan's case." Further in para 127 of Tulsi Ram's case (which has been reproduced in Case of Shyam Narain Shukla by Hon'ble Allahabad High court Lucknow Bench- Photo copy of whose Judgement already supplied to Hon'ble Tribunal on 22.2.90) Hon'ble Supreme Court has further held - - - -"For that purpose it will have to peruse the Judgement of the Criminal Court and consider all the facts and circumstances of the case and various factors set out in Challapan's Case (AIR 1975 SC 2216)".

Therefore, it is nec essary to peruse Challapanis case.

2. Study of Challapan's case goes to show that in it Two points were decided

(i) Consideration of conduct implies opportunity of hearing i.e.Show cause Notice.

.../3.

(ii) What factors are to be considered. These factors have been set out in para 24 of Challapan's case where in it has been laid down that entire conduct of deliquent should be taken into ac count, the gravity of misconduct committed by him, the impact which misconduct is likely to have on administration and other extenuating circumstances or redeeming features if present in the case and so on and so forth.

Out of these two principles laid down in challapan's case, first stands overruled as repeatedly held in paras 114 and 127 of Tulsi Ram's case.

3. As such there can not be any doubt that before passing order of Punishment against an employee as a result of conviction from Criminal Court, his conduct has to be considered in the light of factors laid down in Challapan's case and facts and circumstances available in Judgement of Criminal Court. Any punishment arrived by competent Authority is subject to Departmental Appeal and then to Judicial Scrutny as held in para 127 of Tulsi Ram's Case.

../4.

In the present Case since there is detailed and well discussed Judgement of Criminal Court (High Court) it may be perused to Judge the circumstances etc.

4. The "Conduct" has to be considered as held in Paras 113, 114, 115, 116 117 and 127 of Tulsi Ram's case.

Such conduct must relate to the capacity or position as a Govt. servant and with regard to impact on his official duties or performance as such.

In this connection principle of law has been laid down by a Bench of Hon'ble Allahabad High Court in a case Dost Mohammad Vs. Union of India reported in 1981 LIC 1210 at Para 6, the relevent portion of which is reproduced below and Photocopy of entire report as published in 1981 LIC 1210 is also attached for ready reference.

Relevent Portion of Para 6 of 1981 LIC 1210 reads as under:-

BEFORE AWARDING ANY PENALITY TO A GOVT. SERVANT UNDER RULE 19 (1) THE COMPETENT AUTHORITY MUST APPLY HIS MIND TO CONDUCT OF GOVT. SERVANT WHICH HAS LED TO HIS CONVICTION TO ASCERTAIN WHEATHER THERE WAS ANY REASONABLE NEXUS IN THE CONDUCT AND HIS

.../5.

OFFICIAL DUTIES OR THE CONVICTION INVOLVING MORAL TURPTITUDE WHICH WOULD BRING THE PUBLIC SERVANT INTO DISREPUTE --- ".

Further it has been held in this case that Rule 19 (1) Postulates giving of opportunity to the deliquent Govt. servant.But in view of Tulsi Ram's case it will not be appreciable.

However this part that while considering the conduct there must be reasonable nexus in the conduct and official duties has to be followed. Thus conduct must relate in the capacity of Govt. Servant and not as an accused whose conduct has already been considered by Criminal court.

5. In para 127 of Tulsi Ram's case Hon'ble Supreme Court has referred to Shakar Das Vs. Union of India 1985 (2) SCC 358 = AIR 1985 SC 772 = 1985 LIC 590 also known as Delhi Milk Supply Union Case. In this case employee was convicted for committing offence u/s 409 IPC but having regard to the entire circumstances of the case penality of Dismissal was held too excessive and harsh.

Photocopy of Shankar Das's Case (Supra) is also attached.

../6.

6. The various cases referred by learned counsel for Respondent e.g. that of Calcutta, Madras and Punjab High court related to conviction on account of duties connected with discharge of Function of Govt. servant, therefore these cases are not applicable to the facts of present case.

In view of above submissions and detailed stady of Tulsi Ram's case, Challapan's case and Shankar Das's case decided by Hon'ble Supreme Court and principle of law laid down by Allahabad High court in 1981 LIC 1210 Dost Mohammad Vs. Union of India it is clearly established that in the present case.

(i) There was absolutely no any reasonable nexus in the conduct and his official duties nor the offence involved moral Turplitude (para 6 of 1981 LIC 1210).

(ii) While considering the conduct principles and factors set out in Challapan's case have not followed- as directed by SC in Tulsi Ram's case.

and

(iii) In any view of the matter having regard to findings of High court in Criminal case and entiriety of all the circumstances, 17 years unblemished record of service,

Good conduct in jail and consequent release on probation by Governor, and humanaitarian view (1985 LIC 590) the decision of dismissal from service can not be said to be fair and reasonable and deserves to be quashed as done by Hon'ble Supreme Court in Case of Shankar Das 1985 LIC 590.

Submitted accordingly.

Counsel for Petitioner,

A.K.Dixit,
Advocate,
509/28-Ka, Old Hyderabad,
Lucknow.

Lucknow:

Dt. 27 Feb.,1990

proceedings is, therefore, a futile exercise. The question is whether any public interest would be served by continuation of such disciplinary proceedings?

17-18. In other words is the deeming provision in R. 9 so unbridled? Can the provision be used to keep the inquiry alive for any number of years or indefinitely? Can it be 'deemed' that even after 20 years the inquiry is still not concluded, as in the present case? Considering public interest and difficulties in Government administration, I am of the opinion that power to continue or to start a disciplinary proceeding after retirement may be necessary in certain cases. By itself the power is not arbitrary. It has a rational basis. But the power must be exercised within a reasonable period and consistent with justice and public interest. In M. ... v. Y. B. Zala (1980 1 Serv L R ... Lab 1 C 89) (Guj.) Gujarat High C ... that starting of a departmental e... 12 years after the incident, was violative of natural justice. The court held th... was too much to expect that delinquent would be able to remember and narrate the old incident. We have here the lapse of more than 20 years. If R. 9 is to be saved from the attack of arbitrariness it must be read in a reasonable and just manner. A guideline is available in R. 9(2)(b). A fresh inquiry cannot be started "in respect of any event which took place more than four years before such institution." This statutory limitation embodies sound principle of equity and justice. It also recognises the principle of finality and repose. I do not find any difference in principle from the point of view of public interest, 'in continuation of pending proceeding' & 'starting a fresh proceeding'. I, therefore, hold that in case of an event more than four years old on the date of retirement, a departmental proceeding cannot be continued after retirement under R. 9(2) of the Pension Rules, 1972. It is well settled that requirement of natural justice can be read in a Rule even if the Rule is silent about it, particularly, in a Rule concerning quasi-judicial proceeding. In this view of the matter I hold that the departmental proceeding, if any, pending against the petitioner after 30-3-1975 is bad in law. The same is hereby set aside.

19. The petition, for the reasons stated above, succeeds. The order of compulsory retirement dated 25-4-1972 is set aside. The petitioner would be entitled to continuation in service up to 30-3-1975 and consequential benefits. The continuation of suspension of the petitioner was without any justification. The petitioner would be entitled to full pay and allowances from 3-9-1959 to 24-5-[illegible] with increments and other service benefits according to Rules. The pending departmental proceedings are quashed. The counsel's fee at Rs. 500/-. Rule is made absolute.

Rule made absolute.

1981 LAB. I. C. 1210

(ALLAHABAD HIGH COURT)

K. N. SINGH AND S. J. HYDER, JJ.

Dost Mohammad, Petitioner v. Union of India and others, Opposite Parties.

Civil Misc. Writ Petn. No. 323 of 1979, D/- 25-1-1980.

(A) **Constitution of India, Arts. 311, 22[illegible] — Central Civil Services (Classification, Control and Appeal) Rules (1965), R. 19 — Conviction of Government Servant on criminal charge — Disciplinary proceedings — Duty of disciplinary authority.**

Where the delinquent Government Servant was removed from service merely because of his conviction on a criminal charge without giving him any opportunity of hearing and the disciplinary authority proceeded under R. 19 mechanically without applying mind to the question as to whether the conduct which led to the Government Servant's conviction was sufficient to impose a penalty against him and if at all what penalty should be imposed on him.

Held that the disciplinary authority acted in violation of the principles of natural justice as well as in excess of his jurisdiction. Before awarding any penalty to a Government Servant under R. 19(1) the competent authority must apply his mind to the conduct of the Government Servant which has led to his conviction to ascertain whether there was any reasonable nexus in the conduct and his official duties or the conviction involving moral turpitude which would bring the public service into disrepute. A Government Servant may have been convicted for a very trifling offence and in that situation it would be fair for the competent authority to consider the question as to whether the

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nduct which led to his conviction could be e subject matter of departmental enquiry d whether any penalty could be imposed the Government Servant. The rule itself ntemplates that the disciplinary authority ll consider the circumstances of the case apply its mind to the relevant factor d y thereafter pass orders which it consid s cessary. The expression "may consider the rcumstances of the case" postulates giving opportunity to the delinquent Government rvant and consideration of his reply by the disciplinary authority. Any order imposing penalty to the Government servant under R. 19(1) without giving any opportunity of hearing to him would be in violation of the principles of natural justice and the same would be void. 1975 Lab I C 17 Ker.), 1977 Lab I C (NOC) 75 (All) and 1975 Lab I C 1598 (S C), Rel. on.

(Paras 4, 5, 6)

(B) Constitution of India, Arts. 14, 311 — Central Civil Services (Classification, Control and Appeal) Rules (1965), R. 19(1) — Conviction of Peon and Extra-Departmental Agent of Post and Telegraph Department on criminal charge — Removal of only peon from service held discriminatory — Extra-Departmental Agent is holder of Civil Post under Union of India unlike peon and could not be dealt with in a different manner. 1977 Lab I C 908 (S C), Rel. on.

(Para 3)

Cases Referred : Chronological Paras

1977 Lab I C 908 : AIR 1977 S C 1677 3
1977 Lab I C NOC 75 : (1977) 2 Serv L R 81 (All) 6
1975 Lab I C 1598 : AIR 1975 S C 2216 7
1975 Lab I C 1732 : 1975 Serv L R 749 (Ker) 5

V. S. Jauhari and S. N. Sinha, for Petitioner; V. K. Burman and Chand Kishore, for Opposite Parties.

K. N. SINGH, J.:— This petition under Art. 226 of the Constitution is directed against the order of the Assistant Engineer, (Phones), Allahabad, dated Aug. 23, 1978, terminating the petitioner's services under R. 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and also against the order of the appellate authority dated 6-12-1978, dismissing the petitioner's appeal against the order of termination.

2. Dost Mohammad, the petitioner, was employed as peon in the Posts and Telegraph Department and posted in the office of the Assistant Engineer, Phones, at Allahabad. The petitioner's real brother, Mukhtar Ahmad, was also employed as Extra-Departmental Agent under the Posts and Telegraph Department. On 18-4-1974 an incident of marpit took place in the petitioner's village as a result of which the petitioner along with his brother Mukhtar Ahmad and his father Badruddin was convicted for an offence under S. 323, IPC. An appeal against trial court's order was partly allowed and the petitioner's conviction was upheld but the sentence was modified by the District and Sessions Judge. The petitioner, his brother Mukhtar Ahmad and Badruddin, petitioner's father, all were directed to undergo imprisonment for one month, further each of them was directed to pay a fine of Rs. 100/-. Thereafter, the Assistant Engineer, Phones, removed the petitioner from service under R. 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, by his order dated Aug. 23, 1978. The petitioner preferred an appeal against that order but that was rejected by the Divisional Engineer, Telephones, by his order dated 6-12-1978. Aggrieved, the petitioner has challenged the aforesaid two orders.

2A. Learned counsel for the petitioner urged that the petitioner's conduct which led to his conviction was not related to his service and he could not be departmentally punished for that conduct and as such he could not be removed from service on account of his conviction. The competent authority did not afford any opportunity of hearing to the petitioner before removing him from service in a mechanical manner without considering the relevant matters. The impugned order of removal has been passed arbitrarily and unreasonably for a very trivial matter which is unconnected with the petitioner's duties. The respondent-authorities discriminated the petitioner in removing him from service while on the same facts and circumstances they reinstated the petitioner's brother and allowed him to continue in service. Learned counsel for the respondent-authorities urged that R. 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, does not contemplate any enquiry or giving of an opportunity to the delinquent employee. Once a Government servant is convicted for an offence by a criminal court it is open to the competent authority to remove him from service without giving him any opportunity. The principles of natural justice are not attracted and the petitioner was not entitled to any opportunity of hearing

before the issue of impugned order. He further urged that R. 19 of the Rules was applicable to the petitioner as he was a Government servant while the said rule was not applicable to his brother as he was an extra-Departmental Agent.

3. The petitioner was a Government servant and he was entitled to the constitutional protection of Art. 311. Rr. 14 to 18 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, prescribe procedure for imposing penalties on a Government servant which provide for the issue of a charge-sheet and giving of an opportunity to the delinquent employee to submit his explanation and to cross-examine witnesses and to produce witnesses in his defence. These Rules are designed to afford reasonable opportunity of defence to the Government servant as contemplated by Article 311 of the Constitution. Rule 19, however, incorporates the principle contained in proviso (a) to Art. 311(2) of the Constitution, which lays down that Art. 311(2) shall not apply where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to the conviction on a criminal charge. Proviso (a) to Art. 311(2) of the Constitution does not contemplate holding of an enquiry and giving of opportunity as contemplated by cl. (2) of the Article before imposition of a major penalty. Rule 19 enunciates the same principle and the same considerations would be applicable to R. 19 also. It is thus clear that if a delinquent Government servant is convicted of a criminal offence the competent authority is entitled to impose any of the penalties contemplated under the rules without holding any departmental enquiry as required by Rr. 14 to 18.

4. The question then arises as to whether it is open to the competent authority under R. 19 to impose the penalty on a Government servant even if he is convicted for an offence which has no connection with his duties. Rule 19(1) in substance lays down that where any penalty is imposable on the Government servant for a conduct which has led to his conviction on a criminal charge, the competent authority may take action against him. The rule empowers the disciplinary authority to impose penalty on the basis of conviction and sentence passed against the delinquent employee by a competent court, but the conviction must be in respect of which a departmental trial could be taken against the Government servant and a penalty could be imposed on him for the conduct which was the subject matter of his prosecution and conviction. A government servant may have been convicted for a very trifling offence and in that situation it would be fair for the competent authority to consider the question as to whether the conduct which led to his conviction could be the subject matter of departmental enquiry and whether any penalty could be imposed on the Government servant.

5. In Krishnan Kutty v. Sr. Supdt. of Post Offices, Ernakulam (1975 Serv L J 749) : (1975 Lab I C 1732) (Ker), almost in similar circumstances the Kerala High Court held that R. 19(1) cannot be invoked to dispense with the services of a Government servant if the conduct which led to his conviction was not in the course of employment and could not be a misconduct as per the Conduct Rules and further if the same could not be the subject matter of disciplinary action. A domestic quarrel which is wholly unrelated with the employment of the Government servant cannot be a misconduct for the purpose of R. 19(1). In the instant case, the petitioner was convicted of an offence under S. 323, I. P. C. on a complaint made by a private individual which alleged that some altercation took place between the petitioner, his brother and his father on one side, and the complainant on the other, with regard to possession over a plot of land in his village far away from his place of posting. The incident of marpit which took place in the petitioner's village could not be the subject matter of any departmental trial under the rules and no penalty could be imposed on him even if such departmental trial was held as the petitioner had not committed any misconduct as contemplated by the service Rules. Before awarding any penalty to a Government servant under R. 19(1) the competent authority must apply his mind to the conduct of the Government servant which has led to his conviction to ascertain as to whether there was any reasonable nexus in the conduct and his official duties or the conviction involving moral turpitude which would bring the public service into disrepute. The competent authority is required to apply his mind to these considerations before exercising his power under R. 19(1).

6. Rule 19 does not require the competent authority to give any opportunity of hearing to the delinquent Government Servant. There is no necessity for holding a detailed departmental enquiry, nonetheless

principles of natural justice require that before awarding any penalty the competent authority should give an opportunity of hearing to the delinquent Government servant. This would meet the requirement of natural justice. The respondent's contention that even the principles of natural justice are not applicable cannot be accepted. It is necessary to bear in mind that R. 19 contemplates three exigencies under which the services of a Government servant can be dispensed with. Firstly, on the ground of conviction on a criminal charge, secondly, where the disciplinary authority if satisfied that it is not reasonable and practicable to hold an enquiry and, thirdly, where the President is satisfied that in the interest of the security of the State it is not necessary to hold the enquiry provided under the rules. The rule, however, further lays down that the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit." The Rule therefore itself contemplates that the disciplinary authority shall consider the circumstances of the case and apply his mind to the relevant factors and only thereafter it may pass orders which it may consider necessary. The expression "may consider the circumstances of the case" postulates giving of opportunity to the delinquent Government servant and consideration of his reply by the disciplinary authority. If an opportunity of hearing is given to the delinquent Government servant, he may place facts and circumstances before the disciplinary authority to persuade him not to award any penalty against him or to award a minor penalty. Any order imposing penalty to the Government servant under R. 19(1) without giving any opportunity of hearing to him would be in violation of the principles of natural justice and the same would be void. In Union of India v. Rajendra Prasad Srivastava (1977 (2) Serv L R 81) : (1977 Lab I C (NOC) 75) (All), a Division Bench of our Court held that the disciplinary authority, while exercising his power under R. 14(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, must give an opportunity of hearing and representation to the Government servant, as without giving that opportunity the disciplinary authority cannot consider the matter objectively. The principles laid down in Rajendra Prasad's case are fully applicable to the instant case as the provisions of R. 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, are almost identical to R. 19 of the Central Civil Services (Classification, Control and Appeal) Rules.

7. In Divisional Personnel Officer v. T. R. Chellappan (AIR 1975 S C 2216) : (1975 Lab I C 1598), the Supreme Court while considering R. 14 of the Railway Servants (Discipline and Appeal) Rules held that the concluding part of R. 14 imports a rule of natural justice in enjoining that before taking a final decision in the matter the delinquent employee should be heard, the circumstances must be objectively considered. The rule further requires that there should be active application of mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the conduct and the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. The rule further confers power on the disciplinary authority to decide whether on the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. The principles laid down by the Supreme Court in Chellappan's case squarely apply to the instant case. There is no dispute that the petitioner was not given any opportunity of hearing and explanation before the disciplinary authority issued the impugned order removing him from service. A perusal of the impugned order clearly shows that the disciplinary authority did not apply his mind objectively to the question as to whether the conduct which led to the petitioner's conviction was sufficient to impose the penalty against him and if at all what penalty should be imposed on him. It appears that the disciplinary authority mechanically exercised its power under R. 19 to remove the petitioner from service merely because the petitioner had been convicted of a criminal offence under S. 323 IPC. In our opinion the disciplinary authority acted in violation of the principles of natural justice as well as in excess of his jurisdiction. The appellate authority also acted in the same manner and it failed to apply its mind to the questions raised by the petitioner in appeal.

8. The petitioner's grievance that he has been discriminated also appears to be well founded. The respondent's contention that his brother, Mukhtar Ahmad, being extra-departmental Agent was not a Government servant and as such the Civil Services (Classification, Control and Appeal) Rules were not applicable to him, is untenable. In Superintendent of Post Offices v. P. K. Rajamma (AIR 1977 S C 1677) : (1977 Lab I C

908) it was held that extra-Departmental Agent was a Government servant and he holds a civil post under the Union of India as provided under Article 311 of the Constitution. In this view of the matter Mukhtar Ahmed was a Government Servant like the petitioner and both constituted the same class. Since both of them were convicted for the same offence arising out of the same incident, it was not open to the disciplinary authority to deal with the petitioner in a different manner so as to allow Mukhtar Ahmad to join his duties and to remove the petitioner from service. The plea of hostile discrimination is therefore well founded.

9. In the result, we allow the petition and quash the impugned order of the Assistant Engineer dated Aug. 23, 1978, as well as the order of the Divisional Engineer dated 6-12-1978. The petitioner is entitled to his costs.

Petition allowed.

1981 LAB. I. C. 1214

(ANDHRA PRADESH HIGH COURT)

RAGHUVIR AND SEETHARAMA REDDY, JJ.

K. Lakshmaiah, Appellant v. The Union Government of India and others, Respondents.

C. C. C. Appeal No. 78 of 1979 and C. M. P. No. 3174 of 1981, D/- 31-3-1981.

(A) Central Civil Services (Classification, Control and Appeal) Rules (1965), R. 14(3) and (4) — Scope — Extent of rights of delinquent officer.

In the instant case the delinquent officer requested the inquiry officer to supply copies of various documents, listing in all thirteen. It was also mentioned therein that, where copies were not possible, an opportunity to peruse and take relevant extracts may be given. This was followed by another letter requesting that the additional documents required and asked for earlier may be supplied. Further a letter was written by the officer addressing the vigilance officer acknowledging the fact of inspection of the documents. Receipt was also issued by the officer acknowledging receipt of the copies of statements of five witnesses. From the foregoing, what is manifest is that mere non-production of the copies of additional documents asked for would not vitiate the entire inquiry unless gross prejudice is shown to have been caused. In this case, no such occasion could be said to arise for the simple reason that the additional documents asked for, though no copies were supplied, were given the inspection of, if so far as they were available on record, which was precisely what was asked for by the delinquent officer. Not only that from the evidence, it was quite clear that, after adequate perusal of the documents asked for, the cross-examination was effectively completed and that the officer did not register any protest with regad to the non-supply of the documents. In the circumstances, it cannot be tantamounting to denial of reasonable opportunity. Even, if there is any denial, no prejudice to the delinquent officer had been established as in the instant case effective inspection of the documents was not in dispute. Further it was wide open to the delinquent officer to have summoned such of the documents that were said to have not been available on record. If that be so, nothing has been made out on this count to establish that there has been any contravention of the principles of natural justice or mandatory provision of Rule, which would vitiate the departmental proceedings. Case law discussed. (Para 15)

(B) Central Civil Services (Classification, Control and Appeal) Rules (1965), R. 13(8) — Refusal of prayer for appointment of legal practitioner by enquiry officer — No prejudice caused nor denied of reasonable opportunity — Enquiry could not be held to be vitiated. 1980 Lab I C 654 (S C) Foll. AIR 1957 Andh Pra 414 Dist. (Para 16)

(C) Civil P. C. (5 of 1908), O. 41, R. 31 — Appellate order confirming order of trial authority — Need not give detailed reasons. AIR 1966 S C 1827 Foll. (Para 19)

(D) Specific Relief Act (47 of 1963), S. 34 — Suit for declaration for declaring departmental proceeding void — Could not be treated as appeal. (Civil P. C. (1908), S. 9 — Constitution of India Art. 311).

A suit challenging the validity of the departmental proceedings cannot be treated as an appeal from the finding in the departmental proceedings or the punishment inflicted upon the Government servant, even if these are erroneous. A question, which goes to the root of the jurisdiction and the conduct of the departmental trial and vitiates

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the result, or w... shown to La... officer, the... proceedings ... the civil court to Pra 240 Rel. o... Foll.

Cases Referred

1980 Lab I C 654
1978 Lab I C 423 Har.)
1976 Lab I C ...
1973 Lab I C ...
AIR 1973 S ...
1970 Serv L ...
(1967) 1 Ser. L ...
AIR 1966 S ...
AIR 1963 S ...
AIR 1961 S ...
AIR 1958 S ...
AIR 1958 A...
AIR 1958 M...
AIR 1957 Andh. ...
AIR 1957 Andh. ...
AIR 1955 S C 160

Y. Suryanaray... Subrahmanya Re... Central Govt. ass... on behalf of the ...

SEETHA... appeal by t... of the 2nd A... Hyderabad dis... declaratio... plaintiff fro... that the plain... consequential be removal up to th... service, for dam... and for costs.

2. The mater... in brief are: The ... memo. on 18-9-19... during the yea... misconduct and ... by falsifying bill... purchase of ... points from ... altering two ... Rs. 18/- as ... respectively ... actually pu... commissio... and made s... contraven... (Conduct) Rules...

1985 LAB. I. C. 590

(SUPREME COURT)

(From: Delhi)

Y. V. CHANDRACHUD, C. J., D. A. DESAI AND AMARENDRA NATH SEN, JJ.

Civil Appeal No. 480 (N) of 1973, D/- 12-3-1985.

Shankar Dass, Appellant v. Union of India and another, Respondents.

(A) Constitution of India, Art. 311 (2) Second Proviso, Cl. (a) — Govt. servant convicted on criminal charge, released under provisions of Probation of Offenders Act — Liability to dismissal under Cl. (a) of Second Proviso to Art. 311 (2) — Does not cease by reason of provision of Sec. 12 of Probation of Offenders Act. ((i) Probation of Offenders Act (20 of 1958), Section 12 — (ii) Dismissal — Public servant — Release after conviction on criminal charge under Probation of Offenders Act).

Where a Govt. servant was convicted of a criminal charge, he could not be said to be not liable to be dismissed in view of Provisions of Sec. 12 of the Probation of Offenders Act when he is released under the beneficial provisions of that Act. (Para 4)

Sec. 12 of the Probation of Offenders Act provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of S. 3 or S. 4 "shall not suffer disqualification" attaching to a conviction for an offence under such law. The order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of Sec. 12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled "Disqualifications for membership of Parliament and State Legislatures" and Chapter IV entitled "Disqualifications for Voting" contain provisions which disqualify persons convicted of certain charges from being members of legislatures or from voting at elections to legislatures. That is the sense in which the word "disqualification" is used in Sec. 12 of the Probation of Offenders Act. (Para 4)

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(B) Constitution of India, Art. 311 (2) Second Proviso, Cl. (a) — Dismissal of Govt. servant on conviction of criminal charge — Power as to, has to be exercised fairly, justly and reasonably — Dismissal — Public servant — Conviction on criminal charge. Decision in Letters Patent Appeal D/- 10-10-1972 (Del.) Reversed.

Where the Govt. imposed the penalty of dismissal on a Govt. servant on his conviction for offence under Sec. [illegible] I. P. C. in spite of the fact that the Magistrate convicting him found that the servant could not deposit the money in time under compelling circumstances and expressed the opinion that he should be dealt with under the Probation of Offenders Act, without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned, the dismissal was liable to be set aside. Decision in Letters Patent Appeal, D/- 10-10-1972 (Del.) Reversed. (Para 1)

Clause (a) of the second proviso to Art. 311 (2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But that power, like every other power, has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since Cl. (a) of the second proviso to Art. 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. (Para 1)

CHANDRACHUD, C. J.:— Cases which evoke sympathy come frequently before the Courts. But, pity, not often. The case before us has a unique story to tell. The story of a crime committed under the stress of personal misery, compounded by the apathy of the Establishment and the appalling delays of law. Ironically, the silver lining is furnished by the bravery of a broken man who has been fighting against injustice for the last 23 years. When justice is done or so the Judges believe, the conscience

...ed. But in this case, despite ...g all that can be done for ...llant within the framework of ... have an uneasy conscience. De... only defeats justice and robs it ...mediate relevance to the parties ...hakes the very confidence of the ... the desire and ability of law ... assist them when they need ...stance most.

...appellant was retrenched by ...try of Rehabilitation, Govern... India in 1960, whereupon he ...ved as a Cash Clerk by the ...lk Supply Scheme Department, ... under the administrative con... the Government of India. In 1962, ...rosecuted for breach of trust in ...of a sum of Rs. 500/-. He repaid ...unt and pleaded guilty to the ...Accepting that plea, the learned ...te, First Class, Delhi, convicted ...er Sec. 409 of the Penal Code ...iew of the peculiar circumstan... ...ing to the crime and the crimi... released him under Sec. 4 of the ... of Offenders Act, 1958. As a ... the conviction, the appellant ...missed from service summarily, ...ct from April 14, 1964.

...appellant filed a suit in 1966 ...ourt of the Sub-Judge, First ...lhi for setting aside his dismis... service, mainly on the ground ...he was released under the Pro... Offenders Act, it was not per... ...o the authorities to visit him ... penalty of dismissal from ser... ...t suit was dismissed on the ...hat since the appellant was con... a criminal charge, he was liable ...missed under Clause (a) of the ...roviso to Article 311 (2) of the ...ch. The decree of the trial ... confirmed by the learned ... Senior Sub-Judge, Delhi in ...1968. The appellant filed Se... ...al No. 142 of 1968 in the High ...Delhi which was allowed by ...bur, J. on April, 13, 1971. The ...udge accepted the contention of ...lant that, by reason of the pro... ...tained in Sec. 12 of the Proba... ...ffenders Act, he could not be ... from service without affording ...sonable opportunity of being ...required by Art. 311 (2) of the ... The Government of India ...ers Patent Appeal against that ...which was allowed by Jagjit Singh and R. N. Aggarwal, JJ. on October 10, 1972. This appeal of the year 1972 has come up for hearing in this Court more than 11 years after it was filed.

4. Section 12 of the Probation of Offenders Act must be placed out of way first. It provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Sec. 3 or 4 "shall not suffer disqualification" attaching to a conviction for an offence under such law. The order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of S. 12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled "Disqualifications for membership of Parliament and State Legislatures" and Chapter IV entitled "Disqualifications for Voting" contain provisions which disqualify persons convicted of certain charges from being members of legislatures or from voting at elections to legislatures. That is the sense in which the word "disqualification" is used in Sec. 12 of the Probation of Offenders Act. Therefore, it is not possible to accept the reasoning of the learned single Judge of the Delhi High Court.

5. But though this is so the ultimate order passed by the learned single Judge has to be upheld. It can be supported on grounds other than the one on which it rests.

6. The learned Magistrate, First Class, Delhi, Shri Amba Prakash, was gifted with more than ordinary understanding of law. Indeed, he set an example worthy of emulation. Out of the total sum of Rs. 1,607.99 which was entrusted to the appellant as a Cash Clerk, he deposited Rs. 1,107.99 only in the Central Cash Section of the Delhi Milk Scheme. Undoubtedly, he was guilty of criminal breach of trust and the learned Magistrate had no option but to convict him for that offence. But, it is to be admired that as long back as in 1963, when Section 235 of the Code of Criminal Procedure was not on the Statute book and later refinements in the norms of sentencing were not even in embryo, the learned Magistrate gave close and anxious attention to the sentence which, in

the circumstances of the case, could be passed on the appellant. He says in his judgment: The appellant was a victim of adverse circumstances: his son died in February 1962, which was followed by another misfortune: his wife fell down from an upper storey and was seriously injured: it was then the turn of his daughter who fell seriously ill and that illness lasted for eight months. The learned Magistrate concluded his judgment thus:—

"Misfortune dodged the accused for about a year ..... and it seems that it was under the force of adverse circumstances that he held back the money in question. Shankar Dass is a middle aged man and it is obvious that it was under compelling circumstances that he could not deposit the money in question in time. He is not a previous convict. Having regard to the circumstances of the case, I am of the opinion that he should be dealt with under the Probation of Offenders Act, 1958".

7. It is to be lamented that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since Clause (a) of the second proviso to Art. 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical.

8. Accordingly, we allow this appeal, set aside the judgment of the Delhi High Court dated October 10, 1972 and [illegible] that the appellant shall be reinstated in service forthwith, with full back [illegible] from the date of his dismissal until [illegible] instatement. The Government of India will pay to the appellant the costs of the suit, the First Appeal, the Second Appeal, the Letters Patent Appeal and this appeal which we quantify at Rs. five thousand. The appellant will report for duty punctually at his former place of work on April 1, 1985.

9. In this brief judgment, we have referred to many unhappy facts, but must mention one more. We had adjourned this appeal, after hearing it at some length, in order to enable the Government to consider whether the appellant could be reinstated in service with a reasonable adjustment in the payment of back wages. The learned counsel appearing on behalf of the Union of India has shown us a letter written by a Deputy Secretary stating that the Hon'ble Minister of Agriculture desired him to say that this Court should decide the case on merits. We have done our modest best in that regard.

Appeal allowed.

1985 LAB. I. C. 592

(SUPREME COURT)

P. N. BHAGWATI, AMARENDRA NATH SEN AND RANGANATH MISRA, JJ.

Writ Petns. Nos. 9323 to 9333 of 1983 and 4830 of 1983. D/- 12-3-1985.

Karam Pal, etc., Petitioners v. Union of India and others, Respondents.

And

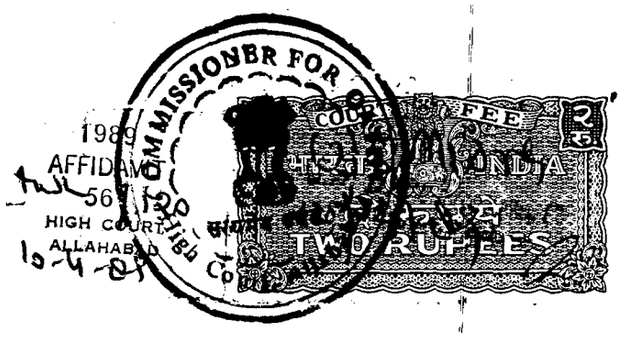
Ram Sarup Kanwar, Petitioner v. Union of India, Respondent.

Constitution of India, Arts. 309, 311 and 16 — Central Secretariat Service Rules (1962), Rr. 13, 18 — Determination of seniority of Assistants — Select list for grade of Section Officers — Substantial compliance in implementing the Rules — Court cannot interfere.

The petitioners who were [illegible] covered under the Rules challenged the select list for the grade of Section Officers for the years 1978, 1979 and 1980 and the common seniority list dated [illegible] 1979, as also the provisional supplementary list of Assistants dated 21-[illegible]. They further prayed that the select list and seniority list be re-published [illegible]

CC/CC/B378/85/MVJ

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW



Rejoinder affidavit to the oounter affidavit filed on behalf of respondents.

In re:

Registration No.1477(I)of 1986

Uma Shanker Misra ... Petitioner

Versus

Union of India through the Secretary,Government of India, Ministry of Communication,New Delhi and others. ...respondents.

Uma Shanker Misra, aged about 52 years,son of late Sri R.K.Misra, resident of P.T.9/1, Malaviya Nagar,police station Khala Bazar,Lucknow do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the petitioner in the aforesaid reference petition and is fully oonversant with the faots of the oase deposed to hereunder.

2. That the deponent has read the accompanying oounter affidavit and understood the oontents mentioned therein.

3. That the application for production of oonfidential file and record of dismissal of the

(A151)

petitioner was moved before the Hon'ble Tribunal on 25.11.1988 on which date this Hon'ble Tribuan was pleased to direct the Opposite parties to produce the file before the Court on the next date.

2. That the applicant/petitioner has already bronght in the writ petition for summoning the record of the file no. ST/QF/USM and the Opposite parties are fully aware about the oontroversy involved in the present writ petition and the purpose of the said file would be relevant for resolving the oontroversy and as suoh they oannot oppose to produce the file before this Hon'ble Tribunal to enable the Tribunal to know the truth.

3. That the oontents of para 1 of the oounter affidavit need no reply.

4. That the contents of para 2 of the counter affidavit are not disputed to the extent that an affidavit was not filed in support of the applicat-ion . It is however stated that the affidavit is already filed along with the writ petition record of which was sent to the Hon'ble Tribunal. In any case the deponent/petitioner is filing an affidavit in support of the petition as well as in support of the application whioh was filed earlier.

5. That the contents of para 3 so far as it relates inferences whioh have been drawn by the Opposite parties regarding the motive of moving the application for summoning the record are denied. It is however not disputed that he was suspended

COMMISSIONER FOR OATHS
High Court, Allahabad

on account of a criminal charge against him on 19.1.1973 .

6. That the contents of para 4 of the counter affidavit are not disputed.

7. That the contents of para 5 of the counter affidavit are not disputed to the extent that an appeal was filed by the petitioner in which the judgment of the Session Judge convicting the petitioner/appellant under Section 302 was modified and he was convicted under Section 304 Part I I.P.C. and was sentenced to undergo regorous imprison-ment for a period of 7 years and fine of Rs.2,000/-.

8. That the contents of para 6 of the counter affidavit as stated are not admitted and it is further stated that for the purposes of knowing as to whether the appointing authority applied his mind to the judgment of the Court, it is expedient that confidential file may be looked into.The Opposite parties should not have any objection for bringing all the facts and relevant documents before this Hon'ble Tribunal as the same would be in the interest of justice.

9. That the contents of para 7 of the counter affidavit are not admitted as stated. It is further stated that the disciplinary authority has to apply his mind considering circumstances and the facts of each case as to what penality should be imposed on the employee in case of conviction on a criminal charge.

COMMISSIONER FOR OATHS High Court, Allahabad

10. That the contents of para 8 of the counter affidavit are not admitted as stated. The Opposite parties should not have any objection for bringing the record before this Hon'ble Tribunal.

11. That with respect to the contents of para 9 of the counter affidavit it is stated that in para 13 of the writ petition it was submitted ~~that~~ by the petitioner that the respondent no.3 had passed the order without perusing the judgment of the Hon'ble HighCourt. The first prayer made in thewrit petition was with respect to the issuance of a Writ of certiorari for quashing the order impugned in the writ petition and calling for the file no.ST/QF/USMisra.

12. That in para 10 of the rejoinder affidavit it has been aaserted by the petitioner that the disciplinary authority even without going through of the judgment of the Hon'ble HighCourt had passed the order of punishment as the judgment of the Hon'ble High Court was not available with the appointing authority. It is further submitted that even if no separate application for summoning the record was moved before the Hon'ble Court, the same does not prohibit the petitioner for all times to come for moving the application before the Hon'ble Tribunal knowing the truth.

13. That the contents of para 11 as stated are not admitted. The petitioner 's submission is that when the order of the Hon'ble Court was not available with the respondents, there was no question of application of any mind as to what punishment be awarded on the basis of the judgment. It is further stated that the

COMMISSIONER FOR OATHS High Court, Allahabad

respondents have not specifically pointed out as to how the certified copy of the judgment was available to them and from what source.

14. That the contents of para 12 of the counter affidavit are denied as stated . Relevant paragraphs of the writ petition and rejoinder have already been quoted above.

15. That the contents of para 13 of the counter affidavit are admitted to the extent that the affidavit was not available in support of the applioation butthe facts remains that the relevant facts have also been brought on record through affidavit in support ofthe writ petition and rejoinder affidavit and the applioant has a right to rely on these facts which are supported by an affidavit . In any case the deponent is filing again an affidavit in sppport of the applioation which was filed earlier.

16. That the contents of para 14 of the counter affidavit are denied, and it is stated that in the interest of justioe it is expedient that the Opposite parties be directed to produce relevant file before this Hon'ble Tribunal.

COMMISSIONER FOR OATHS High Court, Allahabad

DEPONENT

Lucknow:Dated:
April 10, 1989.

VERIFICATION

I, the above-named deponent do hereby verify that the contents of paras 1 to 16 of this affidavit are true to my knowledge. No part of it is false and

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nothigg material has been concealed so help me God.

DEPONENT

Lucknow: Dated:
~~March~~ April 10, 1989.

I identify the deponent who has signed before me.

Advocate.

Solemnly affirmed before me on 10-4-89 at 12.30 ~~A.M.~~/P.M. by Sri Uma Shanker Misra, the deponent who has been identified by Sri Prabhakar Tewari, Advocate, High Court, Allahabad, Lucknow Benoh, Lucknow.

I haveefully satisfied myself in examining the deponent that he understands the contents of this affidavit which has been read over and explained by me.

Harikesh Sharma Adv
OATH COMMISSIONER
High Court, Allahabad
Lucknow Bench
No. 56/120
Date 10-4-89

IN THE HONB'LE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Civil Misc. Appeal No. 8935 /1984

Uma Shanker MISRA .. Applicant

In Re :

Writ Petition No. 4954 of 1983

Uma Shanker MISRA .. Petitioner

V/s

Union of India & Others .. Respondent

APPLICATION FOR EXPEDITING HEARING

Due to the facts and circumstances stated in accompanying Affidavit, it is expedient in the interest of justice that this Hon'ble Court may be pleased to expedite the hearing of the above cited Writ Petition and direct the office to list the Writ Petition for hearing at an early date and as duty bound.

The applicant shall every pray.

Advocate
Counsel for the Applicant

LUCKNOW
Dated : August 24 , 1984

IN THE HONB'LE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

1984
AFFIDAVIT
97 915
HIGH COURT
ALLAHABAD

AFFIDAVIT

Uma Shanker Misra .. Deponent

In Re :

Writ Petition No. 4954 of 1983

Uma Shanker Misra .. Petitioner

V/s

Union of India & Others .. Respondents

I, U.S. Misra aged about 48 years S/o Late Shri RK Misra R/o PT 9/1 Malviya Nagar, P.S. Khala Bazar do hereby solemnly affirm & state as under :

1. That the petitioner was working in the office of the Respondent No. 3 as Time Scale Clerk.

2. That in a domestic quarrel with thepetitioner one Shri C.P.Srivastava died as a consequence the petitioner was suspended from service on 19-1-1983 andhis suspension continued uptil 17-6-1988 when the petitioners service was dismissed from the department vide order contained in Annexure No. 4 to the Writ Petitioner.

3. That about 12 years are going to elapse and petitioner is not getting salary nor any allowance to meet his domestic expenses andin the circumstances facing great hardship.

4. That the petitioner's dismissal from service is quite illegal as no opportunity was given to thepetitioner to show cause as to why he be not dismissed from the services of the department.

Contd 2

उमा शंकर मिश्र

5. That the petitioner has filed the aforesaid Writ Petition challenging the sismissal order as contained in Annexure No. 4 to Writ Petition.

6. That the above cited Writ Petition was admitted by this Hon'ble High Court and the Hon'ble High Court was pleased to direct the respondents to file the counter Affidavit within 6 weeks.

7. That it is submitted that even thereafter the above cited Writ Petition was listed for hearing several times but the respondents have failed and sought time to file the counter Affidavit. The Hon'ble High Court granted time to the respondents to file the counter Affidavit onvarious occasions but the respondents preferred not to file the counter Affidavit.

8. That Hon'ble Mr. Justice K.Nath vide his order dated 6-4-1984 allowed the respondents 4 weeks time to file the counter Affidavit but the same was not filed by the respondents even after the expiry of 4 weeks time and uptil this date. The learned judge had clearly indicated in his order dated 6-4-1984 that it will be the last opportunity and that no further time will be allowed to the respondents to file the counter Affidavit.

Thus in the circumstances the Writ Petition is ready for hearing even though the respondents have voluntarily preferred not to file the counter Affidavit.

9. That the petitioner has no other means of his livelihood and the entire funds of the petitioner is about to exhaust and the petitioner is facing great hardship in maintaining his three children and wife.

contd...3

उमा शंकर मिश्र

10. That it is expedient in the interest of justice that the above Writ Petition be listed for hearing as early as possible.

~~Due to the facts and circumstances stated in accompanying Affidavit, it is expedient in the interest of justice that this Hob'ble Court may be pleased to expedite the hearing of the above cited Writ Petition and direct the office to list the Writ Petition for hearing at an early date and as duty bound.~~

~~The applicant shall ever pray.~~

Advocate ~~Deponent~~

LUCKNOW
DATED : August 24, 1984

Counsel for the Petitioner

VERIFICATION

I, U.S.Misra the above named deponent do hereby verify that the contents of Paras 1 to 9 of this affidavit are true to my knowledge and Para 10 of this Affidavit are believed to be true. No part of this Affidavit is false and nothing material has been concealed. So help me God.

Advocate ~~Deponent~~

LUCKNOW
DATED : August 24, 1984.

Counsel for the Petitioner

I identify the deponent whohas signed before me.

Advocate

Solemnly affirmed before me on 24.8.84 at ~~AM/PM~~ by Shri U.S.Misra who is identified by Shri R.K.Sinha ~~Shri~~ Advocate, High Court, Lucknow. I have satisfied myself by examining the deponent that he understands the contents of this affidavit which has been read out and explained by me.

OATH COMMISSIONER
High Court, (Lucknow Bench)
LUCKNOW
24.8.84

1985
AFFIDAVIT
16/12
HIGH COURT
ALLAHABAD

In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow.

Counter-Affidavit on behalf of respondents against the application dated August 24, 1984 moved by the petitioner for amending the writ petition.

In re

Writ Petition No. 4954 of 1983.

Uma Shanker Misra. ... ... Petitioner.

Versus

Union of India and others. ... . Respondents.

I, R.U. Tewari, aged abot 53 years, son of Sri Ganga Ram Tewari, Divisional Engineer Phones (Administration) office of the District Manager Telephones, Lucknow, do hereby solemnly affirm and state on oath as under :-

1. That the deponent is Divisional Engineer Phones (Administration) respondent no. 3 in the instant writ petition and is fully acquainted with the facts of the case. The contents of the application have been read over and explained to the deponent who has understood the same and its para-wise reply is as follows.

2. That the contents of para 1 of the application need no comments.

3. That with regard to the contents of para 2 of the application under reply it is submitted that the petitioner was dismissed on June 17, 1980 under Rule 19(1) Central Civil Services (Classification, Control & Appeal) Rules, 1965 and the dismissal orders were issued in accordance with the rules prevailing at the relevant time. In the instant

case there was no need for issuing any show cause notice to the petitioner.

4. That the contents of para 3 of the application under reply are denied. It is further submitted that the alleged appeal dated August 2, 1980 was never received in the office of the respondent.

5. That the contents of para 4 of the application under reply are not disputed.

6. That the contents of para 5 of the application under reply as stated are denied.

7. That with respect to the contents of para 6 of the application it is stated that the representation containing the appeal of the petitioner has been decided vide District Manager Telephone's order dated May 2, 1984.

8. That the contents of para 7 of the application under reply need no comments.

9. That the contents of paras 8 and 9 of the application need no comments.

10. That with regard to the contents of para 10 of the application under reply it is submitted that appellate authority has decided the appeal on merits and in accordance with rules.

11. That the contents of para 11 of the application need no comments.

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12. That the amendment application has no force and deserves to be rejected.

Lucknow dated
January 15, 1985. Deponent.

I, the above-named deponent do hereby verify that the contents of paras 1 to 9 and 11 of this counter-affidavit are true to my own knowledge and ~~x~~ the contents of paras 10 and 12 of this counter-affidavit are believed by me to be true and no part of it is false and nothing material has been concealed, so help me God.

Lucknow dated
January 15, 1985. Deponent.

I identify the deponent who has signed in my presence.

(U.K. DHAON)
Additional Standing Counsel,
Central Government.

Solemnly affirmed before me on 15/1/85 at 2.45 ~~a.m.~~/p.m. ~~xx~~ by Sri R.U. Tewari, the deponent who is identified by Sri U.K. Dhaon, Additional Standing Counsel, Central Government. I have satisfied myself by examining the deponent that he understands the contents of this counter-affidavit which has been read out, and explained by me.

Meena Pandey
16/1/85
No. 15.1.35
Date

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW.

C.M.An.No. 3614(W) of 1985

In re:

Writ Petition No.4954 of 1983

Uma Shanker Misra ... ... Petitioner

Versus

Union of India and others. ... Opp.Parties.

APPLICATION FOR EXPEDITE OF THE WRIT PETITION.

The petitioner most respectfully begs to submit as under:-

That for the reasons stated and facts disclosed in the accompanying affidavit it is most respectfully prayed that this Hon'ble Court may very kindly be pleased to list this application alongwith petitioners application of early listed filed earlier, at a very early date.

Lucknow Dated:
March 20, 1985.

(D P Dwivedi)
Advocate
Counsel for the Petitioner.

AHC

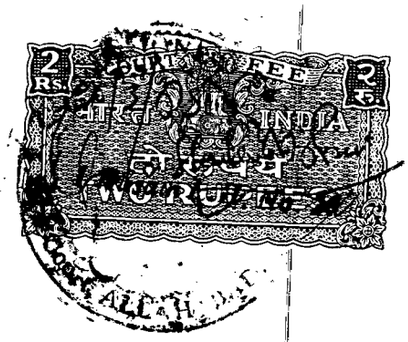
1272

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW.

.....

WRIT PETITION NO.4954 of 1983



Uma Shanker Misra ... ... Deponent

In re:

Uma Shanker Misra ... ...Petitioner

Versus

Union of India & others. ... ...Opp.Parties.

AFFIDAVIT

I, Uma Shanker Misra, aged about 49 years son of Late Shri R.K.Misra r/o Pt.9/1 Malviya Nagar, P.S.Bazar Khala, Lucknow, the deponent do hereby solemnly affirm and state on oath as under:-

1. That the petitioner was employed as Time Scale Clerk in the office of Respondent no.3.

2. That the deponent has filed this writ

उमाशंकर मिश्र

(A165)

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petition no.4954 of 1983 before this Hon'ble Court which is pending disposal after admission.

3. That the petitioner was suspended w.e.f. 19.1.1973 (F.N.) and remained suspended for about 7 years and 5 months i.e. uptil 17.5.1980, when the petitioners services were dismissed from the department. Since 17.6.1980 he is not getting any salary nor any allowance to meet his domestic expenses. Thus for the last 4 years and 9 months he is facing great hardship.

4. That on 20.9.1983 the above cited writ petition was admitted by this Hon'ble Court. The Counter Affidavit was filed by the respondent in September, 1984 and the re-joinder affidavit has been filed on 6.11.1984 in this Hon'ble Court. Thus the case is ready for final hearing.

5. That the petitioner has no other means of his livelihood and he is facing great hardship in maintaining his family including two children and wife.

6. That the petitioner moved an expedite application on 25.8.1984 on which Hon'ble Senior Judge Mr. Justice K.S.Verma was pleased to order on 14.12.1984 to put up the same after 3 months.

उमाशंकर मिश्र

7. That the office has not listed the same on 15.3.1985 as ordered by Hon'ble Senior Justice Mr. K.S.Verma on 14.12.1984 as such the necessity of moving this second application has arisen.

8. That in the ~~xxxx~~ interest of justice it is expedient to list this application alongwith deponent's earlier application as per orders of the Hon'ble Senior Judge.

Lucknow Dated:
March 20, 1985.

उमाशंकर मिश्र
Deponent.

VERIFICATION

I, the deponent named above, do hereby verify that the contents of paragraphs 1 to 8 of this affidavit are true to my own knowledge. No part of it is false and nothing material has been concealed. So help me God.

Lucknow Dated:
March 20, 1985.

उमाशंकर मिश्र
Deponent.

I identify the deponent, who has signed before me.

Advocate.

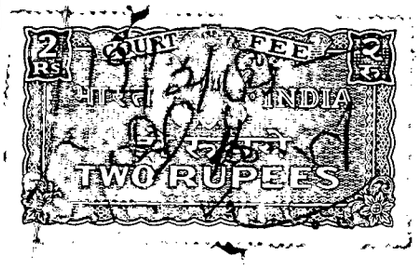
Solemnly affirmed before me on 20-3-85 at 10.50 a.m./p.m. by Sri Uma Shanker Misra the deponent, who is identified by Sri Advocate, High Court, at Allahabad.

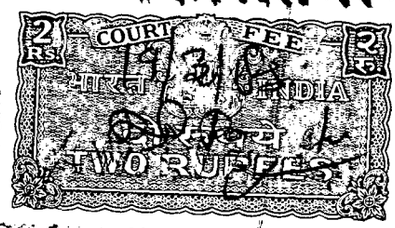
I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read over and explained before me.

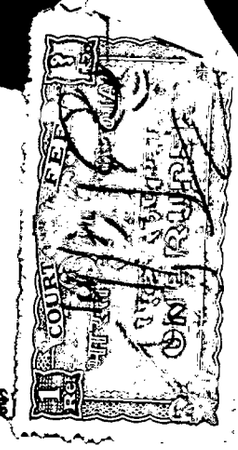
ब अदालत श्रीमान

वादी (मुद्दई) Umashankar Mishra

प्रतिवादी (मुद्दालेह) का **वकालतनामा**







उमा शंकर मिश्र

वादी (मुद्दई)

बनाम

यूनियन आफ इंडिया एन्ड अदर्स

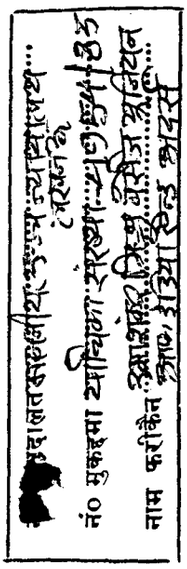
प्रतिवादी (मुद्दालेह)

W.P. नं० मुकद्दमा 4954 सन् १९८३ पेशी की ता० १९ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री डी०पी० द्विवेदी एडवोकेट

Sri Durga Prasad Dwivedi महोदय

Advocate वकील



को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करे - वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मै यह भी स्वीकार करता हूँ कि मै हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरी वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

Accepted
D.P. Dwivedi
Advocate 19/3/85

हस्ताक्षर उमा शंकर मिश्र

साक्षी (गवाह)..... साक्षी (गवाह).....

दिनांक 19-3-1985 महीना

सेवा में
एडीशनल रजिस्ट्रार
माननीय उच्च न्यायालय इलाहाबाद
खंडपीठ लखनऊ, लखनऊ।

विषय :- याचिका संख्या-4954/1985 की फाइनल हियरिंग के लिए प्रार्थना पत्र.

संदर्भ :- प्रार्थना पत्र दिनांक 10-9-1985.

महोदय!

प्रार्थी सविनय सादर निम्नांकित निवेदन करता है :-

(1) कि प्रार्थी लगभग साढ़े सात वर्षों तक (17-1-78 से 16-6-85) सेना से निलंबित रहा और गत प्रायः सवा पांच वर्षों से (17-6-85 से) सेवासे बर्खास्त है।

(2) कि उसने उक्त याचिका इस माननीय न्यायालय में भारत सरकार के विरुद्ध प्रस्तुत की जो स्वीकृत हो गई।

(3) कि प्रार्थी की एक्सपीडाइट हियरिंग का प्रार्थना-पत्र माननीय वरिष्ठ न्यायाधीश श्रीमान डी० एन० झा द्वारा इसी आधार पर अपील 2U में स्वीकृत हो गया था।

(4) कि प्रार्थी का केस फाइनल हियरिंग के लिए दो बार अर्थात ई-यू-85 तथा 25-7-85 को लिस्ट भी हुआ मगर प्रार्थी के अधिवक्ता श्री आर० एन० त्रिवेदी व्यस्तता के कारण उपस्थित न हो सके।

(5) कि अब न्यायालय प्रार्थी का केस लिस्ट करने में विना श्रीमान जी के आदेश के असमर्थता व्यक्त कर रहा है।

प्रार्थना

अतएव आपसे प्रार्थना है कि प्रार्थी का केस 16 सितम्बर से प्रारंभ होने वाले सप्ताह में लिस्ट कराने की कृपा करें क्योंकि प्रार्थी तथा उसके परिवार की दशा अत्यंत दारुण है।

प्रार्थी
उमाशंकर मिश्र
मालवीयनगर
बी डी 17
लखनऊ।

A168

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P. No. 4954 of 1983

vs.

14/2

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1	2	3
20-9-83	Hon R.C.D.S.,J. Admit. Issue notice Sd/- R.C.D.S. 20-9-83	
	C.M. Appl. 10496 of 83	
20-9-83	Hon R.C.D.S.,J. Notice has been accepted - - - - - List in first week of Nov 1983 as regards stay. Sd/- R.C.D.S. 20-9-83	
	3.11.83 [illegible]	
	C.M.A. 10496/83	[illegible]
	Hon K.S.V.J.	[illegible]
7.XI.83	~~Adjournment~~ Adjourned at the slip of Sri Tiwari on the ground of [illegible] List this case immediately after three days KS 7.XI.83	

A169

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P. No. 4954 of 1983

vs.

U/3

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1	2	3
	Habeas case.	
6-1-84	Learned counsel prays for time to file counter affidavit. Four weeks time is allowed for the purpose. List it after four weeks.	
	6-1-84	
20.1.84.	Service report. C.P. 1 to 3. appearance of Sri U.K. Dixit Standing Counsel for Central Govt has been filed. May office proceed.	
	10.2.84 filed in CMANO 10496(W)83 for orders.	
	7.2.84	
	24.2.84	

A1720

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P. No. 4954 of 1983 — 12/5

vs.

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1	2	3
20.2.84	Fixed in CM A No 10446 (W) 83 F.O. Hon M.P. Mehrotra J. S.O. R.O. [illegible] 21/2/84	
9.2.84	Fixed in CMA No 10498/83 for orders Hon K.C. [illegible]	
	Sri U.K. Dhaon learned counsel for the Union of India prays for three weeks further time to file affidavit in reply. The learned counsel states that the affidavit is in the process of drafting. List this case after three weeks. [signature] 2-3-84	
	30.3.84 Fixed in CMA No 10496 (W) 83 for orders Hon K Nath J. S.O. [signature] 30-3-84	after 3 weeks

1415 (A171)

ORDER SHEET

IN THE HIGH COURT JUDICATURE AT ALLAHABAD

W.P. No. 4954 of 1983

vs.

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
1	2	3
	10.1.85 fixed CM Appl 8933 (W) 84 (amendt.) for orders.	
		CC Sri Singh
	25.1.85 fixed CM Appl 8933 (W)-84 for orders	
19-2-85	19.2.85 fixed CM Appl 8933 (W)-84 for orders.	CC Sri Sing
	[illegible] J. Wrongly listed in view of orders dated 20.12.84. 19/2/85	
21.3.85	CM Appl 3614 (W)-85 (expedite) Put up with record before Hon Mr Senior Judge as soon as possible.	
5.4.85	5-4-85 fixed CM Appl. 8933 (W) 84 3614 (W) 85 for orders.	Before Senior Judge

[illegible] J.

Applications are allowed.

Since the matter relates to dismissal

A172

ORDER SHEET

1/1/6.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

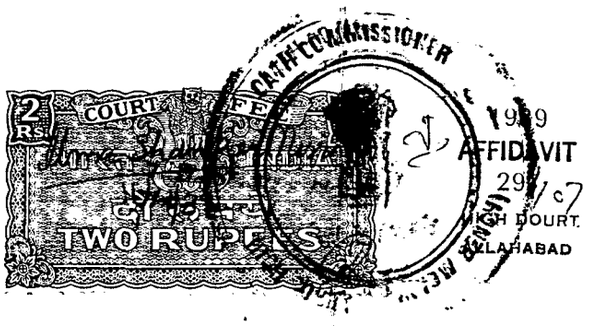
4b No. 4954 of 1983

Vs.

	Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
	1	2	3
		6-9-85 fixed with CMA 8933(w)84 for hearing	By S' case S/c
		10.9.85 fixed with CMA 8933 -84 for hearing	S/c
	25.9.85	25.9.85 fixed with CMA 8933-84 for hearing Hon'ble V J List for hearing in the next week if possible 25.9.85	S/c By AR
		3.10.85 - fixed with CMA 8933-84 for hearing	early By AR
	9.10.85	9-10-85 fixed with CMA 8933-84 for hearing Hon'ble V J The application for amendment of writ petition	S/c fo By Hon

B127

IN THE HON'BLE ADMINISTRATIVE TRIBUNAL,
SITTING AT LUCKNOW.



Affidavit

In

Civil Misc.Application No. of 1989.

In re:

Reference Petition No.1477(T)/1986

Uma Shanker Misra .... Petitioner

Versus

Union of India and others ..Opposite parties

I, Uma Shanker Misra, aged about 57 years, son of late Sri R.C.Misra, resident of A.T.C/1, Malviya Nagar, P.S.Mahila Bazar, Lucknow do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the petitioner in the aforesaid reference petition and is fully conversant with the facts of the case.

2. That the deponent has read the accompanying application and understood the contents mentioned therein.

3. That the contents of paras 1 to 5 of the accompanying application are true to my knowledge for summoning the records

Lucknow: Dated:
April 11, 1989

Deponent

B120

V E R I F I C A T I O N

I, the above-named deponent do hereby solemnly affirm and verify that the contents of paras 1 to 5 of this affidavit are true to my knowledge. No part of it is false and nothing material has been concealed so help me God.

(शंकर मिश्र)
DEPONENT

Lucknow: Dated: ~~November 25, 1989~~ ~~April 11, 1989~~ ~~11/4/1989~~ 11/4/89

I identify the deponent who has signed before me.

Advocate

Solemnly affirmed before me on 11/4/89 at 2.30 A.M./P.M. by Sri Uma Shanker Misra the deponent who has been identified by Sri Prabhakar Tewari, Advocate, High Court, Allahabad, Lucknow Bench, Lucknow.

I have fully satisfied myself in examining the deponent that he understands the contents of this affidavit which has been read over and explained by me.

(K. M. SRIVASTAVA)
Oath Commissioner
High Court
No. 29
Date 11/4/89

12/4/89
सत्यापक
CAT (LUCKNOW BENCH)

OATH COMMISSIONER
11/4/89
HIGH COURT (LUCKNOW BENCH)

B129

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
SITTING AT LUCKNOW.

Misc.
Civil/Application No. of 1988

Application for summoning of record.

In

Reference Petition No.1477(T)/1986

Uma Shanker Dixit ... Petitioner/
~~RxKxMxsxx~~ Applicant.

Versus

Union of India through the Secretary to Govt.,Ministry of Communication,New Delhi and others. ...Opp.parties.

The applicant/petitioner most respectfully submits as under:-

1. That the petitioner/applicant in the aforesaid reference Petition has challenged the order of dismissal and the appellate order. One of the ground raised in the reference petition challening the order of dismissal is that the appointing authority did not peruse the judgment of the Hon'ble High Court convicting the petitioner and by reducing the punishment.

2. That the petitioner/applicant has also prayed in the petition that the record of thefile no.MST/QF/USM be called for.

3. That in the rejoinder affidavit the applicant/petitioner has stated that the appointing authority has passed the order of dismissal without going the judgment of this Hon'ble Court as the same was not

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R.C. Yadav Clerk
to Sri A. Mohiley
25/11/88

available with the appointing Authority.

4. That for ascertaining the correct position as to whether the appointing authority had considered the judgment of the Hon'ble High Court at the time of passing of the impugned order of dismissal, it is necessary that the file no.MST/QF/ USM regarding the disciplinary action against the petitioner be summoned from the custody of the respondent no.3 ~~in xxdixxxx~~ which would conclusively prove as to whether the judgment was on record at the time of passing of the impugned order of dismissal or not and whether there was any application of mind by the appointing authority in passing the impugned order.

5. That though the request has already been made in the main petition but theapplicant is making a separate application to ensure that the Opposite parties no.3 may produce the relevant file before the Hon'ble Tribunal in the interest of justice.

P R A Y E R

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal maybe pleased to direct the Opposite party no.3 to produce the file no. MST/QF/USM before this Hon'ble Tribunal and this Hon'ble Tribunal may pass such other orders which are deemed just and proper in the circumstances of the case.

Lucknow:Dated:
November 25,1988

(S.K.KALIA)
Advocate,
Counsel for the applicant/Pet.

(B13)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH, ALLAHABAD:

CIVIL MISC. APPLICATION NO. 9-B/T OF 1988

In

REGISTRATION NO. 1477 (T)/86

District: Lucknow

Uma Shanker Misra ... Applicant

V E R S U S

THE UNION OF INDIA .. OPPOSITE PARTIES

APPLICATION FOR RESTORATION OF THE CASE

That for the facts, reasons and circumstances of the case narrated in the accompanying affidavit, it is most respectfully prayed that the Hon'ble Tribunal may be graciously pleased to restore the aforesaid case and provide full opportunity to the applicant to prove his case before the Hon'ble Tribunal and also issue or pass any other or further order or orders deem fit and proper in the circumstances of the case.

LUCKNOW:

DATED: 23.2.1988.

(SATYA DEV SINGH)
ADVOCATE,
COUNSEL FOR THE APPLICANT:

1988

AFFIDAVIT
27 1234
HIGH COURT
ALLAHABAD

COURT FEE
TWO RUPEES

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH, ALLAHABAD:

....

AFFIDAVIT IN MISC. APPLICATION NO. 9-B/T OF 1988

In

REGISTRATION NO. 1477 (T)/86

District : Lucknow

Uma Shanker Misra ... APPLICANT

VERSUS

THE UNION OF INDIA ... OPPOSITE PARTY

I, Uma Shanker Misra, aged about 52 years, son of Late Shri Ram Krishna Misra, resident of PT-9/1, Malviya Nagar, Police Station Bazar Khala, Lucknow, the deponent, do hereby make oath and state as under:-

1. That the applicant is the concerned Central Government employee in writ petition No.4954/1983, filed before the Lucknow Bench of the Hon'ble High Court, Allahabad.

COMMISSIONER FOR OATHS
23-2

2. That the said writ petition was transferred to the Hon'ble Tribunal for disposal and was registered there with registration number 1477 (T)/86.

3. That the applicant, who has been unemployed for a very long time fell seriously sick and was unable to move from September 1, 1987 to February 10, 1988.

4. That the applicant has come to know that his case with the above-said registration number was dismissed in default on 8.9.1987.

उमाशंकर मिश्र

5. That the applicant being seriously ill could not attend the Hon'ble Tribunal on 8.9.1987 and also could not inform his counsel Shri S.P.Singh,

...2

B133

who is a very busy Advocate.

6. That the applicant in proof of his sickness is filing a medical certificate as ANNEXURE NO. 1 to this application.

7. That the aforesaid default on the part of the applicant was due to compulsion of serious sickness and was not deliberate and, as such, is liable to be condoned by the Hon'ble Tribunal and as a result of it the aforesaid case is liable to be restored in the interest of justice.

8. That the applicant prays that the Hon'ble Tribunal be pleased to restore the aforesaid case and provide full opportunity to the applicant to prove his case before the Hon'ble Tribunal.

9. That the counsel of the applicant Shri S.D.Singh has categorically informed the applicant that he has not received any information from the Hon'ble Tribunal about the exparte decision in the aforesaid case so far and the applicant, who visited Allahabad on 15.2.1988 inspected the file and came to know about the dismissal in default of his case.

10. That in the interest of justice the Hon'ble Tribunal be pleased to restore the case.

LUCKNOW:

DATED: 23.2.1988.

(UMA SHANKER MISRA)
APPLICANT

V E R I F I C A T I O N

I, the above-named deponent, do hereby verify that the contents of paras 1 to 10 of this affidavit are true to my own knowledge. No part of it is false and nothing material has been concealed. So, help me God.

...3

Verified and signed this 22nd day of February, 1988 within the court Premises at

उमाशंकर मिश्र

(Uma Shanker Mishra)
Applicant.

Lucknow:
dated: 23.2.1988.

I know personally and identify the deponent who has signed in my presence.

उमाशंकर मिश्र

Advocate 23/2/88

Solemnly affirmed before me in my chamber on 23-2-88 at 10.30 A.M/P.M by Umashanker Mishra who is identified by Sri S.D. Singh Advocate. I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read out to him and explained to him fully.

HIGH COURT COMMISSIONER 23.2.88

(S. A. R. CHAUDHRY)
OATH COMMISSIONER
High Court, Allahabad
Lucknow Bench
No. 27/123/88
Date 23-2-88

॥ श्री धन्वन्तरये नमः ॥

फोन : निवास : ८२५५३
कालेज : ८२९०१

Annexure N:-1

(B135)

वैद्य दयाराम अवस्थी शास्त्री

एम० ए०, साहित्याचार्य, आयुर्वेदाचार्य, बी० आई० एम० एस०
प्रधानाचार्य–नागार्जुन आयुर्वेद महाविद्यालय, लखनऊ-३
पू० सदस्य–बोर्ड आफ इण्डियन मेडिसिन, उत्तर प्रदेश
पू० सदस्य–आयुर्वेदिक एवं यूनानी तिब्बी अकादमी, उ० प्र०
पू० मन्त्री–नि० भा० आयुर्वेद विद्यापीठ, दिल्ली-२६
अध्यक्ष–प्रादेशिक आयुर्वेद सम्मेलन, उत्तर प्रदेश, १९८३–८५
प्रधान सम्पा[illegible]–आयुर्वेद महासम्मेलन पत्रिका, दिल्ली

शिव सदन
३१५/१०, बाग महानारायन,
चौक, लखनऊ-२२६००२

पत्रांक.........

दिनांक १-२-८८

प्रमाणित किया जाता है कि श्री उमाशंकर जी मिश्र (जिनके हस्ताक्षर नीचे हैं) बार-बार मन्द ज्वर उदर विकार एवं वातविकार से ग्रस्त हैं तथा चिकित्सा में हैं अतः दिनांक १-२-८८ से १०-२-८८ तक पूर्ण विश्राम की आवश्यकता है।

दयाराम अवस्थी
(नं. ४३०४)
१-२-८८

शिव औषधालय
शिव सदन ३१[illegible] महानारायण
चौक लखनऊ-३

उमाशंकर मिश्र
उमाशं[illegible]

हस्ताक्षर
दयाराम अवस्थी
१-२-८८

शिव औषधालय
शिव सदन ३१५/१० बाग महानारायण
चौक लखनऊ-३

(B136)

Before the Central Administrative Tribunal,
Circuit Bench, Lucknow.

...

Civil Misc. Application No. of 1989.

On behalf of :-

Union of India & Others .. Applicants/
Respondents.

In

Registration No. 1477(T) of 1986.

Uma Shanker Misra .. .. Petitioner

Versus.

Union of India through the
Secretary, Govt. of India, Ministry
of Communication, New Delhi & Others.. Respondents.

To,

The Hon'ble the Vice Chairman and his other companion Members of the aforesaid Tribunal:

The humble application of the abovenamed applicants Most Respectfully Showeth as under:

Received copy 24-2-89

1. That the said application filed by the counsel for the petitioner is not supported by any affidavit.

2. That the said application is misconceived one and has been filed with a view to rowing and fishing of enquiry in the case which is not

warranted under the provisions of the Act. It is submitted that Uma Shanker Misra was employed as T.S.Clerk in the office of D visional Engineer Phones, Lucknow. He was suspended vide Divisional Engineer Phones,Lucknow Memo No. QF/USM/2 dated 19.1.1973 with effect from 19.1.1973(For e Noon) on account of criminal charges against him.

3. That Sri Uma Shanker Misra was convicted and sentenced to Life Imrpsonment under Section 302 of the India. Penal Code and five years Rigorous Imprisonment under Section-449,I.P.C. by Sri R.N.Sinha,learned II Temporary Civil & Sessions Judge,Lucknow.

4. That against the judgment of the learned II Temp. Civil & Sessions Judge,Lucknow the petitioner Uma Shanker Misra preferred an appeal before the Hon'ble High Court ,Bench at Lucknow. The said appeal was decided on 8.11.1978 and the Hon'ble High Court substituted the Life Imprisonment to seven years' R.I. and a fine of Rs.2000/- was imposed and in default to suffer Rigorous Imprisonment for a further term of three years under Section-304,Part-I, I.P.C.. His bail was cancelled and he was directed to surrender forthwith to serve out the remaining portion of his sentence.

5. That the Disciplinary authority after careful consideration of the facts and circumstances of the case and in view of the judgment dated 8.11.1978 passed by this Hon'ble High Court dismissing the petitioner in exercise of power conferred under Rule-19(1) of Central Civil Services(Classification,Control & Appeals) Rules,1965.

6. That Rule-19(1) of the aforesaid Rules envisages that an order can be straightway passed by the Disciplinary authority to impose the penalty without following the prescribed detailed procedure under Rules-14,15 and 16 of the said Rules.

7. That in view of the above facts and the facts mentioned in detail in the accompanying counter affidavit it is respectfully prayed that the application dated 25.11.1988 filed by Sri S.K.Kalia,Advocate on behalf of the applicant/petitioner be rejected.

PRAYER

It is,therefore,most respectfully prayed that this Hon'ble Court may graciously be pleased to reject the application filed by Sri S.K.Kalia,Advocate on behalf of the applicant/petition on 25.11.1988.

Dt. 24. 2. ,89.

(Ashok Mohiley)
Counsel for the Union of India.

B135

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:
CIRCUIT BENCH:
LUCKNOW.

1989
AFFIDAVIT
3/3c
HIGH COURT
ALLAHABAD

...

Counter-affidavit

In

Civil Misc. Application No. of 1988

In

Registration no.1477(T) of 1986.

Uma Shanker Misra .. .. Petitioner

Versus.

Union of India through the Secretary
Govt.of India, Ministry of Communication
New Delhi and others.. ..Respondents.

Affidavit of ~~B.P. Garg~~, S.A. Khan
aged about 45 years, son of
Sri ~~Late~~ B.M. Khan
~~District Manager, Telephones~~, Assistant Engineer (ESTT)
Lucknow.

Deponent.

I, the deponent, abovenamed, do hereby solemnly affirm and state as under:

1. That the deponent is working as ~~District Manager, Telephones~~, Assistant Engineer (ESTT), Lucknow and has been authorised to file the present counter affidavit on behalf of the respondents in the aforesaid case. He is, as such, well acquainted with the facts of the case, deposed to below.

24/2/89

2. That the deponent has read the application filed by the counsel for the petitioner which is not supported by any affidavit ,and has fully understood the contents of the same.

3. That the said application is misconceived and has been filed with a view to rowing and fishing of enquiry in the case which is not warranted under the provisions of the Act. It is submitted that Uma Shanker Misra was employed as T.S.Clerk in the office of Divisional Engineer Phones, Lucknow . He was suspended vide Divisional Engineer Phones,Lucknow Memo no. F/USM/2 dated 19.1.1973 with effect from 19.1.1973 (Fore noon) on account of criminal charge against him.

4. That Sri Uma Shanker Misra was convicted and sentenced to Life Imprisonment under Section-302 of the Indian Penal Code and five years Rigorous Imprisonment under Section 449,I.P.C. by Sri R.N.Sinha,learned II Temporary Civil & Sessions Judge,Lucknow.

5. That against the judgment of the learned II Temporary Civil & Sessions Judge, Lucknow the petitioner Uma Shanker Misra preferred an appeal before the Hon'ble High Court Lucknow Bench. The said appeal was decided on

29.2.88

8.11.1978 and the Hon'ble Court substituted the Life Imprisonment to seven years' R.I. and a fine of Rs2000/- and in default to suffer Rigorous Imprisonment for a further term of three years under Section ~~4~~ 304,Part-I ,I.P.C.. His ~~appeal~~ bail was cancelled and he was directed to surrender forthwith to serve out the unexpired portion of his sentence.

6. That the Disciplinary authority after careful consideration of the facts and circumstances of the case and in view of the judgment dated 8.11.1978 passed by this Hon'ble Court dismissing the petitioner in exercise of power conferred under Rule-19(1) of Central Civil Services (Classification,Control & Appeals)Rules,1965 .

7. That Rule-19(1) of the aforesaid Rules envisages that an order can be straightaway passed by the Disciplinary authority to impose the penalty without following the prescribed detailed procedure under Rules-14,15 and 16 of the said Rules.

8. That in reply to the contents ofpara no.1 of the application it is submitted that the same are matters of record hence can be suitably replied at the time of arguments of this petition. It is submitted that the Disciplinary authority

had gone through the judgment of the Hon'ble High Court convicting the petitioner. It is submitted that the conviction of the petitioner was maintained. Reduction of sentence is of no consequence.

9. That the contents ofpara no.2 of the application are not admitted. It is submitted that no such prayer is made in the petition and no orders were passed by the Hon'ble HighCourt.

10. That the contents of para no.3 of the application are not admitted. It is submitted that the same are matters of ~~record~~ arguments. It is submitted that for passing the order it is not necessary that copy of the judgment be submitted by the petitioner alone. The Department can get the copy through its own source.

11. That the contents ofpara no.4 of the application are not admitted. It is submited that the petitioner is trying to rowing and fishing enquiry. It is submitted that in respect of disciplinary action against the petitioner the production of file no.MST/QF/USM,as alleged by the petitioner is not at all necessary. A detailed counter affidavit has been filed on behalf of the Department which contains the correct facts.

(B143)

~~XXX~~ It is submitted that the production of file is not at all necessary. The petitioner has moved the application maliciously with some ulterior motive.

12. That the contents of para no.5 of the application are wrong. Itis submitted that the averments that request has already been made in the main petition by the petitioner for production of the file is absolutely wrong. The petitioner in paras nos.28 and 29 of the petition has referred to with regard to the disposal of his appeal by the District Manager(Telephones) while the assertions made in the present application is somewhat different. As such the production of file is not at all necessary.

13. That the prayer made by the petitioner for summoning of the file is based on unsubstantia facts. No affidavit in support of the averments has been filed by the pet tioner and confidential file cannot be summoned /produced before the Hon'ble Tribunal to enable the petitioner for making rowing and fishing enquiry in his case.

14. That it is expedient and in the interest of justice that the applicatim dat 25.11.1988 filed by Sri S.K.Kalia,Advocate on behalf of the applicant/petitioner be re

I, the deponent, abovenamed, do hereby verify and declare that the contents of paras nos...1 and 2 of this affidavit are true to my personal knowledge; those of paras nos..3 to 14 of this affidavit are based on information received from perusal of the papers on record; those of paras nos..— of this affidavit are based on legal advice; which all the deponent believes tobe true; that no part of this affidavit is false and that nothing material has been concealed in it.

So help me God.

Deponent.

I, R.C.Yadav, clerk to Sri Ashok Mohiley, Advocate, High Court, Allahabad do hereby declare that the person making this affidavit and alleging himself tobe Sri ~~B.P.Garg~~ S.A. Khan is the same person who is personally known to me.

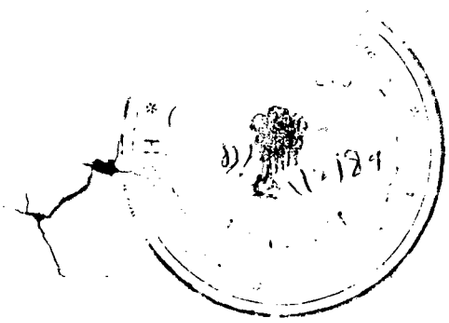
Clerk.

BMS

Solemnly affirmed before me on this 24th day of Feb.,1989 at 12 a.m./p.m. by the deponent who is identified by the aforesaid clerk.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read over and explained to him by me.

Oath Commissioner



OATH COMMISSIONER
High Court Allahabad,
Sitapur Bench, LUCKNOW
No. 3136 / 24/2/89

(B)46

बअदालत श्रीमान Administrative Tribunal, Lucknow महोदय

वादी (मुद्दई)
~~प्रतिवादी (मुद्दालेह)~~ का **वकालतनामा**

Uma Shankar Misra वादी (मुद्दई)

बनाम

Union of India & others प्रतिवादी (मुद्दालेह)

Claim नं० मुकद्दमा सन १९ पेशी की ता० १९ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

Sri S. K. Kale, Adv. एडवोकेट

महोदय

~~वकील~~

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हुँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर सैं दाखिल करें और तस्दीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करें। वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मै यह भी स्वीकार करता हूँ कि मैं हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता हैं उसकी जिम्मेदारी मेरे वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

नाम अदालत.....
नं० मुकद्दमा
नाम फरीकैन.....

Accepted
S. K. Kale

हस्ताक्षर उमाशंकर मिश्र

साक्षी (गवाह)..... साक्षी गवाह.....

दिनांक..... महीना.....

Court fee remitted vide Notification No. M-1015/I-602(1
Dated August 5, 1946 published in U. P. Gazette
Dated August 10, 1946 Part I, page 277.

B147

14.11.86

IN THE CENTRAL ADMINISTRATIVE Tribunal ADL. BENCH ALLAHABAD.

Registration No. 1497 (T) of 1986 (T)

District : Alld

Shri Uma Shankar Misra — Petitioner/ Appellant/ Applicant/

VERSUS

Union of India & others — Respondent/ Opposite Party/

I, ASHOK MOHILEY Additional Standing Counsel for the Government of India(except Income Tax and Railways) at the High court of Judicature at Allahabad, appear on behalf of:

The Government of India/Union of India/Central Government (except Income Tax and Railways) and

Appearance on behalf of the Respondents

.....

.....

Respondent (s)/Opposite Party (parties) Nos..... who is/are the Petitioner/Appellant/Applicant/Respondent/Opposite party in the aforesaid case.

ASHOK MOHILEY
Presenting Officer
Central Govt.
Allahabad.

Dated :

T.A. No. 1477(T) of 1986
(W.P. No. 4954 of 1983)
Fixed on 13th July 1989.

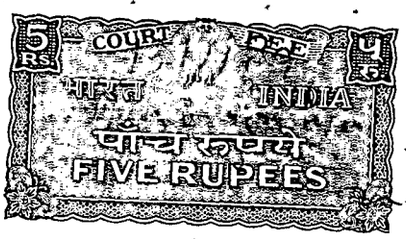
वदालत श्रीमान् Hon'ble Central Administrative Tribunal महोदय
Circuit Bench.
Lucknow.

(वादी) अपीलान्ट

श्री Uma Shankar Misra. का

प्रतिवादी रेस्पाडेन्ट

वकालतनामा



वादी (अपीलान्ट)
Uma Shankar Misra
vs
Union of India & Ors.
T.A. No. 1477(T) of 1986
(W.P. No. 4954 of 1983)

बनाम प्रतिवादी रेस्पाडेन्ट

नं० मुकदमा सन् पेशी की ता० १९ ई०

ऊपर लिखे मुकदमा में अपनी ओर से

ABHAYA KUMAR DIXIT वकील
Sa 9/28 Ka, Old Hyderabad Aerodrome Colony महोदय
Lucknow. एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा इकरार करता हूं और लिखे देता हूं इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल कर या लौटावे या हमारी ओर से डिगरी जारी करावे और रूपया वसूल कर या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और और तसदीक करें मुकदमा उठावे या कोई रूपया जमा करें या हमारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार हैऔर होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकदमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी। इसलिए यह वकालत नामा लिख दिया प्रमाण रहे और समय पर काम आवे।

नाम अदालत ..... नाम फरीकैन ..... बनाम .....
मुकदमा नं० .....

Accepted
Abhay
13.7.89.

हस्ताक्षर उमा शंकर मिश्र

साक्षी (गवाह) साक्षी (गवाह)

दिनांक महीना सन् १९ ई०

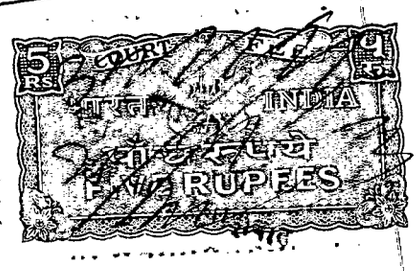
Before the Central Administrative Tribunal
Allahabad

ब अदालत श्रीमान ..... महोदय

[वादी] अपीलान्ट Uma Shanker Misra

~~प्रतिवादी [रेस्पान्डेन्ट]~~ श्री ..... का **वकालतनामा**

1477 - 86 (T)



Uma Shanker Misra

अपीलान्ट 24/11/86

Union of India & ors बनाम ~~प्रतिवादी~~ (रेस्पान्डेन्ट)

मुकद्दमा नं० 1477 सन् 1986 पेशी की ता० 24. XI. 1986 ई० and matters

ऊपर लिखे मुकद्दमा में अपनी ओर से Sri Sahaj Ber Singh, Advocate, High Court, 130/23 JC Bose Marg, Lucknow-1

~~वकील~~ ..... महोदय
एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं कि इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोतर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करे या हमारी या विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें यह पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

अदालत .....
मुकद्दमा नं० ..... नाम .....
फरीकैन ..... बनाम .....

हस्ताक्षर ~~नाधोवार मिश्र~~

साक्षी (गवाह) ..... साक्षी (गवाह) .....

नांक 24 महीना XI सन् 1986 ई०

1286

सेवा में डिप्टी रजिस्ट्रार

केन्द्रीय प्रशासनिक न्यायाधिकरण

मोतीमहल, लखनऊ।

आवश्यक प्रतिलिपि

महोदय!

विषय:- रिट पेटीशन सं० टी० ए० 1477 आफ 1986 के जजमेंट की सत्यापित प्रतिलिपि हेतु प्रार्थना पत्र।

सविनय प्रार्थना है कि प्रार्थी को उक्त वाद संख्या- टी०ए०1477 आफ 1986 के जजमेंट की सत्यापित प्रतिलिपि जो 13-3-90 को निर्गत हुआ था को तुरंत प्रदान करने की कृपा करें। प्रार्थना पत्र के साथ सात रुपये मूल्य के चार पोस्टल आर्डर जिनकी सं० 374605, 374606, 374607 तथा 399804 है जो क्रमशः प्रथम तीन दो-दो रुपये के तथा अंतिम एक रुपये का है जो डिप्टी रजिस्ट्रार CAT LUCKNOW को पेयेबुल हैं, संलग्न हैं।

S.O.(J.I.)
Pl. take action for Rules.
24/7

180, Rs 7/-
24/7

प्रार्थी
(उमाशंकर मिश्र)
द्वारा श्री आर० सी० वाजपेयी
549/57 ए०, बड़ा बरहा
(बरहा जूनियर हाई स्कूल के पास)
आलमबाग, लखनऊ-226005.

24 जुलाई 1995

IPC No 645833255 for Rs. 10/-

Petition with Annexure-56
C A - 6 pages
R A - 30 pages
Amendment Appli - 12 pages
Reply by Applicant to the written brief of Argument submitted by respondents on 22-2-90 = 15 pages
Amended C.A - 03 pages

Received 4-8-95

Copy prepared & issued today 4/8/95

imagined. To me the contemner appears to be an arrogant "Daroga" who wants to tell the citizens that it is his writ, which will run supreme. For such an arrogant and indisciplined person, a sentence of fine will not meet the ends of justice.

34. In view of the above, the opposite party is convicted of committing civil contempt of the Court of Judge Small Causes, Lucknow. For this contempt, he shall be detained in civil prison under Section 12(3) for a period of thirty days. In order to enable the police administration to make arrangement during the period the opposite party remains in civil prison. I defer the execution of the order till 14th July, 1985. On 15th July, 1985 the opposite party shall appear before the Additional Registrar of this Court and he shall be committed to the civil prison. The opposite party shall also pay the fee of the petitioner's counsel which is fixed at Rs 300. A copy of this judgment shall be sent to the Senior Superintendent of Police, Lucknow, within fifteen days to enable him to make the necessary arrangements and relieve the contemner for undergoing detention in civil prison.

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Before Hon'ble Mr. Justice K. S. Varma and Hon'ble Mr. Justice S. Saghir Ahmad

Writ Petition No. 1701 of 1985

Decided on July 12, 1985

Jamuna Prashad Shukla ... *Petitioner;*

Versus

State of U. P. and Others ... *Respondents.*

Civil Service—Dismissal—Constitution of India, Article 311(2), second proviso, clause (*a*)—Applicability—The said provision, held, not applicable to dismissal merely on the ground of conviction on a criminal charge.

A perusal of the impugned order in the instant case will indicate that the petitioner has been dismissed merely on the ground that he has been convicted on a criminal charge. The basis of the order is not the conduct which has led to his conviction on a criminal charge. Clause (a) of the second proviso, therefore, does not apply to the facts of the present case and, therefore, the requirements of Article 311(2) had to be complied with. (Para 8)

W. P. No. 806 of 1985 decided on 19-2-1985, partly dissented from.

1984 LCD 294, referred to.

(Delivered by Hon'ble S. Saghir Ahmad, J.)

On July 12, 1985, we had allowed this writ petition by a short order which is quoted below :—

"For the reasons to be recorded later, the writ petition is allowed and the order dated March 28, 1985 contained in Annexure 6 is hereby quashed. It will be open to the opposite parties to pass a fresh order

after appropriate disciplinary proceedings opportonity of hearing to defend himself. There will be no order as to costs."

We now proceed to give our reasons.

2. The petitioner was a lower Division Clerk in the Department of Medical Health and Family Welfare. He was named as one of the accused in the F.I R. lodged at P. S. Kamlapur, district Sitapur on July 28, 1980 at about 9-00 p. m. on the basis of which a case under Section 302, I.P.C. was registered against the petitioner and his associates. The petitioner was ultimately found guilty and consequently convicted under Section 302, I.P.C. for the murder of one Jagan Nath and sentenced to life imprisonment in S. T. No. 946 of 1980 decided on February 8, 1985. The petitioner then filed Cr. A. No. 100 of 1985 in this court which was admitted and the petitioner has been released on bail. The petitioner who was suspended vide order dated September 26, 1980, has been dismissed from service by order dated March 28, 1985.

3. It is this order which has been challenged by the petitioner in this writ petition on the grounds, inter alia, that the opposite parties, in passing the impugned order, have violated the provisions of Article 311(2) as he was not given an opportunity of hearing and that he has been dismissed from service merely because he has been convicted under Section 302, I.P.C. and sentenced to life imprisonment.

4. The question whether an opportunity of hearing is to be given to a person convicted of an offence before dismissing such person from service is to be answered on the basis of the language employed in Article 311(2) as also the language of the exception carved out in the second proviso to the said Article. Article 311(2) provides that a person cannot be dismissed or removed from service or reduced in rank except after an enquiry in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The exception is contained in clause (*a*) to the second proviso which reads as under:—

"Provided further that this clause shall not apply—

(*a*) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(*b*) .....

(*c*) .....

5. Clause (*a*) of the second proviso which has been quoted above clearly contemplates "conduct" which has led to his conviction on a criminal charge and if the basis of dismissal or removal is the "conduct", then it will not be obligatory on the disciplinary authority to comply with the requirements of Article 311(2) but if any other factor is the basis of dismissal or removal, then an elaborate enquiry has to be held and an opportunity has to be given to the concerned employee. To make it more clear, if the dismissal or removal is based on conviction alone, i. e., if the disciplinary authority

dismisses an employee merely because he is convicted on a criminal charge, clause (a) of the second proviso will not apply and the requirements of Article 311(2) will have to be followed. This is the view which has been taken by this court in a recent decision by a Division Bench of which one of us (Hon'ble S. Saghir Ahmed, J.) was a member, in *Trilok Chand Sharma* v. *State of U. P. and Others*, Writ Petition No. 806 of 1985 decided on February 19, 1985. It has been observed in that judgment as follows :—

> "It will be noticed that an enquiry contemplated by Article 311(2) is not to be held where a person is dismissed or removed etc. on the ground of conduct which has led to his conviction on a criminal charge. What is important is that the basis of the dismissal etc should be the conduct which has led to conviction and not mere conviction. The conduct spoken of in clause (*a*) of the proviso refers to the conduct as a Government servant. In order, therefore, that a person may be dismissed or removed from service without holding an enquiry as contemplated by Article 311(2), his conduct as a Government servant, which has led to his conviction, should be the basis of removal. If the dismissal order is based on the ground of mere conviction, it may not be possible to dispense with the enquiry, as it would not be covered by the Exception contained in clause (*a*) of the proviso."

6. The observation made above that the conduct spoken of in clause (*a*) refers to the conduct of a Government servant gives restricted meaning which is not contemplated by it.

7. A similar view has also been taken by brother S. C. Mathur, J. in *State of U. P.* v. *Sadanand Misra and Others*, 1984 Lucknow Civil Decisions 294.

8. A perusal of the impugned order in the instant case will indicate that the petitioner has been dismissed merely on the ground that he has been convicted on a criminal charge. The basis of the order is not the conduct which has led to his conviction on a criminal charge. Clause (*a*) of the second proviso, therefore, does not apply to the facts of the present case and, therefore, the requirements of Article 311(2) had to be complied with.

9 For the reasons stated above, the writ petition is allowed and the order dated March 28, 1985 contained in Annexure 6 is hereby quashed. It will be open to the opposite parties to pass a fresh order after taking appropriate disciplinary proceedings in which the petitioner is afforded adequate opportunity of hearing to defend himself. There will be no order as to costs.

——— **Writ petition allowed.**

imagined. To me the contemner appears to be an arrogant "Daroga" who wants to tell the citizens that it is his writ, which will run supreme. For such an arrogant and indisciplined person, a sentence of fine will not meet the ends of justice.

34. In view of the above, the opposite party is convicted of committing civil contempt of the Court of Judge Small Causes, Lucknow. For this contempt, he shall be detained in civil prison under Section 12(3) for a period of thirty days. In order to enable the police administration to make arrangement during the period the opposite party remains in civil prison. I defer the execution of the order till 14th July, 1985. On 15th July, 1985 the opposite party shall appear before the Additional Registrar of this Court and he shall be committed to the civil prison. The opposite party shall also pay the fee of the petitioner's counsel which is fixed at Rs 300. A copy of this judgment shall be sent to the Senior Superintendent of Police, Lucknow, within fifteen days to enable him to make the necessary arrangements and relieve the contemner for undergoing detention in civil prison.

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Before Hon'ble Mr. Justice K. S. Varma and Hon'ble Mr. Justice S. Saghir Ahmad

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Versus

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(Delivered by Hon'ble S. Saghir Ahmad, J.)

On July 12, 1985, we had allowed this writ petition by a short order which is quoted below :—

"For the reasons to be recorded later, the writ petition is allowed and the order dated March 28, 1985 contained in Annexure 6 is hereby quashed. It will be open to the opposite parties to pass a fresh order

after appropriate disciplinary proceedings opportunity of hearing to defend himself. There will be no order as to costs."

We now proceed to give our reasons.

2. The petitioner was a lower Division Clerk in the Department of Medical Health and Family Welfare. He was named as one of the accused in the F.I.R. lodged at P. S. Kamlapur, district Sitapur on July 28, 1980 at about 9-00 p. m. on the basis of which a case under Section 302, I.P.C. was registered against the petitioner and his associates. The petitioner was ultimately found guilty and consequently convicted under Section 302, I.P.C. for the murder of one Jagan Nath and sentenced to life imprisonment in S. T. No. 946 of 1980 decided on February 8, 1985. The petitioner then filed Cr. A. No. 100 of 1985 in this court which was admitted and the petitioner has been released on bail. The petitioner who was suspended vide order dated September 26, 1980, has been dismissed from service by order dated March 28, 1985.

3. It is this order which has been challenged by the petitioner in this writ petition on the grounds, inter alia, that the opposite parties, in passing the impugned order, have violated the provisions of Article 311(2) as he was not given an opportunity of hearing and that he has been dismissed from service merely because he has been convicted under Section 302, I.P.C. and sentenced to life imprisonment.

4. The question whether an opportunity of hearing is to be given to a person convicted of an offence before dismissing such person from service is to be answered on the basis of the language employed in Article 311(2) as also the language of the exception carved out in the second proviso to the said Article. Article 311(2) provides that a person cannot be dismissed or removed from service or reduced in rank except after an enquiry in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The exception is contained in clause (*a*) to the second proviso which reads as under:—

"Provided further that this clause shall not apply—

(*a*) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(*b*) .....

(*c*) .....

5. Clause (*a*) of the second proviso which has been quoted above clearly contemplates "conduct" which has led to his conviction on a criminal charge and if the basis of dismissal or removal is the "conduct", then it will not be obligatory on the disciplinary authority to comply with the requirements of Article 311(2) but if any other factor is the basis of dismissal or removal, then an elaborate enquiry has to be held and an opportunity has to be given to the concerned employee. To make it more clear, if the dismissal or removal is based on conviction alone, i. e., if the disciplinary authority

dismisses an employee merely because he is convicted on a criminal charge, clause (*a*) of the second proviso will not apply and the requirements of Article 311(2) will have to be followed. This is the view which has been taken by this court in a recent decision by a Division Bench of which one of us (Hon'ble S. Saghir Ahmed, J.) was a member, in *Trilok Chand Sharma* v. *State of U. P. and Others*, Writ Petition No. 806 of 1985 decided on February 19, 1985. It has been observed in that judgment as follows :—

"It will be noticed that an enquiry contemplated by Article 311(2) is not to be held where a person is dismissed or removed etc. on the ground of conduct which has led to his conviction on a criminal charge. What is important is that the basis of the dismissal etc should be the conduct which has led to conviction and not mere conviction. The conduct spoken of in clause (*a*) of the proviso refers to the conduct as a Government servant. In order, therefore, that a person may be dismissed or removed from service without holding an enquiry as contemplated by Article 311(2), his conduct as a Government servant, which has led to his conviction, should be the basis of removal. If the dismissal order is based on the ground of mere conviction, it may not be possible to dispense with the enquiry, as it would not be covered by the Exception contained in clause (*a*) of the proviso."

6. The observation made above that the conduct spoken of in clause (*a*) refers to the conduct of a Government servant gives restricted meaning which is not contemplated by it.

7. A similar view has also been taken by brother S. C. Mathur, J. in *State of U. P.* v. *Sadanand Misra and Others*, 1984 Lucknow Civil Decisions 294.

8. A perusal of the impugned order in the instant case will indicate that the petitioner has been dismissed merely on the ground that he has been convicted on a criminal charge. The basis of the order is not the conduct which has led to his conviction on a criminal charge. Clause (*a*) of the second proviso, therefore, does not apply to the facts of the present case and, therefore, the requirements of Article 311(2) had to be complied with.

9 For the reasons stated above, the writ petition is allowed and the order dated March 28, 1985 contained in Annexnre 6 is hereby quashed. It will be open to the opposite parties to pass a fresh order after taking appropriate disciplinary proceedings in which the petitioner is afforded adequate opportunity of hearing to defend himself. There will be no order as to costs.

——— Writ petition allowed.

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2. 1983 (1) ARC 161, *Sultan Ahmad and one another* v. *Goverdhan Das and others*;

3. 1984 (1) ARC 59, *Abdul Sattar* v. *Mohammad Shafi Quaraishi and others*.

11. In the first case it was pointed out that the rent was mostly deposited in time. In second case it was said that the defence should not be struck off on mere technical ground. In the third case it was held that defence is not to be struck off mechanically. In the case before me neither the rent was deposited in time mostly nor the defence was struck off on technical ground or mechanically, Rather, the matter proceeded for full 4 years, and the set of defendants which could do something was designedly delaying the matter and using the minor defendants as shield. These minor daughters have to remain with their brothers and mother. If brothers and mother are ejected, they can not remain in the house alone and they will go with their mother and brothers so they are not going to suffer seriously. Thus the rulings relied upon by the learned counsel for the petitioner not applicable.

12. Here the case of *Anandi Devi* v. *Om Prakash*, 1987 (Supplement) SCC 527 may be referred. In this case the prayer for striking off the defence under Order 15 Rule 5 C.P.C. was not allowed by Additional District Judge and High Court. This case related to Uttar Pradesh. The Supreme Court said that the Additional District Judge had failed to appreciate that the respondents failed to comply with the requirements under Order 15 Rule 5 C.P.C. by not making a deposit of arrears of rent together with interest and costs. The application for striking off the defence ought to have been allowed and the suit should have been decreed. It was said that the High Court failed to exercise jurisdiction vested in it by declining to interfere. In the case before me, the circumstances are such which indicate that the major defendants who were to act for minors as well, were purposely delaying the matter. So in this case the courts below have rightly exercised the discretion and this court should not interfere.

13. The result is that this petition is dismissed.

———— **Petition dismissed.**

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Before Hon'ble Justice Rajeshwar Singh, J.

Writ Petition No. 7206 of 1988

Decided on September 13, 1988

State of U. P. and others ... *Petitioner*;

Versus

Shyam Sunder Yadava and another ... *Opp. parties.*

Civil service—Dismissal—Dismissal without enquiry on the ground of conviction on a criminal charge—Held, bad—Constitution of India, Article 311(2)(a). **(Para 3)**

Hon'ble Rajeshwar Singh, J.

This petition by State of U. P. and some other Government Officers is directed against the judgment of U. P. Public Services Tribunal through which it quashed the dismissal order of opposite party no. 1. The Tribunal further ordered that opposite party no. 1 will be deemed to have continued in service throughout. As regards suspension order it said that the Department shall consider within three months of the order according to rules the question of salary for the period of suspension and in the event of failure of the Department to do so the petitioner would be given salary for the entire period.

2. It appears from the record that the opposite party no. 1 was first suspended and then dismissed, it the dismissal order it is written that he was being dismissed, because he had been punished for a criminal act and decision have been given even by High Court in revision. It appears from the judgment of the Public Services Tribunal, that lastly the conviction of the opposite party no. 1 was upheld under Section 332, I.P.C. and he was only fined Rs. 200 for giving punishment of dismissal no inquiry was made.

3. The opposite party no. 1 was dismissed without inquiry relying no Article 311 wherein it has been said that this Article regarding inquiry etc. Was not applicable where a person was dismissed on the ground of conduct which led to the conviction of the employee on a criminal charge. The order of dismissal shows that the Department never considered the conduct of the opposite party no. 1 that had led to his conviction on criminal charge. It merely dismissed the employee saying that the opposite party no. 1 had been convicted. This is not permissible. Under Article 311 inquiry can be dispensed with only when a person is dismissed on the ground of conduct which led to conviction, in other words, when the punishing authority thinks that the conduct, which resulted in conviction is such that the person should be dismissed. Here that conduct was not considered and the employee was dismissed without considering that conduct only on the simple ground that the person had been convicted. This is not permissible. So the order of dismissal is certainly erroneous. As regards suspension. The matter was left to be decided by the Department. Hence this writ petition had no merits.

4. The writ petition is dismissed. The period of three months given in judgment as the Tribunal will run from the date of the judgment of this court.

——— **Writ petition dismissed.**

1988 LLJ 328

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13. The result is that this petition is dismissed.

——— **Petition dismissed.**

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4. The writ petition is dismissed. The period of three months given in judgment as the Tribunal will run from the date of the judgment of this court.

——— **Writ petition dismissed.**