

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE F.A. No. 1109/87 of 19
W.P. No. 192/83
 Name of the parties Suresh Chandra Sinha
 Applicant.
 Versus.
Union of India and ors. Respondents

Part A

Description of documents

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3 - Petition/Annexure/Affidavit	A3 to A14
4 - Power/stay application	A15 to A17
5 - Ann. Appli.	A18
6 - Suppli Affidavit	A19 to A21
7 - Counter	A22 to A29
8 - Reminder	A30 to A32
9 - Annexure	A38 to A57
10 - Judgement 08-5-90	A58 to A62

CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for
 consignment to the record room (Decided)

Date : 27-07-11

Countersigned

Section officer/Court officer.

Signature of the
Dealing Assistant.

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

ANNEXURE

INDEX SHEET

CAUSE TITLE 1109 OF 1987 (T)

NAME OF THE PARTIES S. C. Srivastava Applicant

Versus

V.O.T. (P & T) Respondent

Part A, B & C

Sl. No.	Description of documents	Page
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13		

CERTIFICATE

Certified that no further action is required to taken and that the case is fit for consignment to the record room (decided)

Dated 6/4/2011

Counter Signed.....

Section Officer / In charge

Signature of the
Dealing Assistant

TA 1109/07 (T)

:: 2 ::

Serial
number
of
order
and dateBrief Order, Mentioning Reference
if necessaryHow Complied
with and
date of
compliance

No Sitting. Adj. to 2-3-90

This case has been received on transfer.

Notice were issued to the counsels by the Office
at Allahabad. None is present for the parties
Let notice be issued again to the parties as
directed by Hon'ble Mr. D.K. Agarwal, J.M.

2-3-90

Hon. Justice K. Nalk, V.C.
Hon. K. J. Raman, J.M.

OR
notice issued
30/11/90

Shri A.K. Dixit for the
applicant and Shri D. Chandra
for the respondents are present.
On the request of the learned
counsel for the parties list
for admission on 17-4-90, on
which date the case may be
disposed of finally. The
respondents will produce the
record leading to the passing
of the impugned order.

Case is not ad-
mitted. RA filed
Notices were
issued on 30/11/90
No. unrem-
itted. Case has
been return-
ed back

S. & A. Chandra

1/2

A.M.

V.C.

M.

Hon. Mr. D.K. Agrawal, J.M.
Hon. Mr. P.S. Habib Mohammad, A.M.

OR

S.F.R.

L
73

Shri A.K. Dixit for the petitioner
and Shri D. Chandra for the respondents
are present.

On the request of Counsel's
of parties, the case is adjourned
to 4/5/90 for admission.

B

S.F.A.

L
314

Dinesh

Sd

A.M.

J.M.

Tm 1129/87

4-5-90 Hon - Mr Justice K MacL, v c
Hon Mr. K. Obyya, AM.

Arguments heard.
Judgment reserved

BA

AM

Vc.

on/r

Hon K Obyya

Judgment reserved on
3.5.90 4 delivered a
on 5.90 by Hon K. Obyya

AM

Quoted here
D. 12-17/10/12 15/5/90
Dene 10/12

GENERAL INDEX

CIVIL SIDE
CRIMINAL

Chapter XLI, Rules 2, 9 and 15

Nature and number of case W.P. 192-83
Name of parties Surek Chandra. Srivastava vs. Union of India
Date of institution 12-1-83 Date of decision _____

File no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee		Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
				Number of stamps	Value			
	2	3	4	5	6	7	8	9
					Rs. P.			
	1-	W.P. with Docket and app. dist.	11-	-	102.00			
	2-	Comm. 479 (W) 883 fshy	2-	-	5.00			
	3-	Supplementary App. dist.	3-	-	2.00			
	4-	Comm. 3845 (W) 883 with RA.	7-	-	7.00			
	5-	Memo -	1-	-	-			
	6-	Comm. 5183 (W) 883 with RA.	28	-	7.00			
	7-	ord. 82ed	1-	-	-			
	8-	Bank Cpy	1-	-	-			

I have this _____ day of _____ 197 , examined record and compared the entries on this sheet with the papers on the record. I have made all necessary corrections and certify that the papers correspond with the general index, that they bear Court Fee Stamps of the aggregate value 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

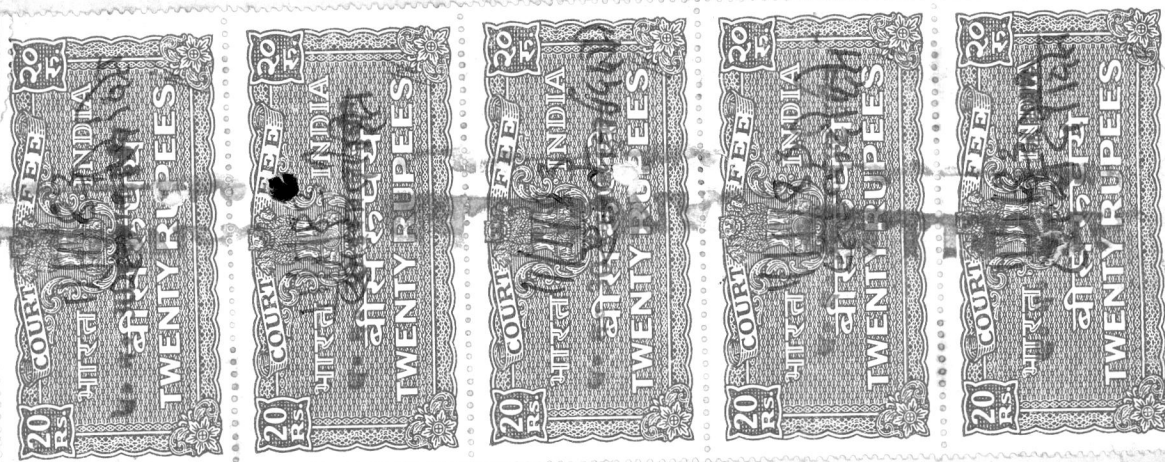
(1)

D
4

In the Hon'ble High Court of Judicature at Allahabad,
(LUCKNOW BENCH), LUCKNOW.

192

Writ Petition No.....of 1923.
Instituted on January, 23.



Sfz loop
11-1-23

Suresh Chandra Srivastava aged about 41 years son of
Sri Kalka Prasad Srivastava, Resident of village and
post Behta Pakauri, Tahsil Biswan, district Sitapur.

...

...petitioner.

V e r s u s .

1. Union of India, through Secretary to Department of
Post and Telegraphs, Ministry of Communication,
New Delhi.

2. Superintendent of Post Offices, Sitapur (U.P.).

...

...Opp parties.

Writ petition Under Article 226 to
=====
the Constitution of India.
=====

To,

The Hon'ble Chief Justice and his Companion Judges
of the Hon'ble High Court.



29

5/

Impressed
Fire Adhesive R, 108f
Total

Correct but final Court fee 1080
will be made on receipt of lower
Court record.
In time up to
Papers filed. Copy of P. 2.
to be filed

Best unprinted Annexure 1 = 30.10.82

11-1-83

Notice for tomorrow
Received copies for ops 182.

Law and Justice
Senior Standing Counsel
for Central Govt.
11-1-1983.

Hon. D.N. Jha, J
Hon. S.S. Ahmad, J

Learned Counsel for Union
of India appearing for the
respondent is allowed three
weeks time to obtain
instructions as prayed.
List thereafter as regards
admission.

Lu. S. H.

Dr 12.1.83
102

The petitioner, above named, most humbly begs to submit as under:-

- 1.. That the petitioner was appointed on the post of Extra Departmental Branch Post Master on 11.1.1971 in the Branch Post Office of village Behta Pakauri Tahsil Biswan, District Sitapur.
- 2.. That since 11.1.1971 the petitioner is continuously working on the post of Extra Departmental Branch Post Master of the aforesaid Branch Post Office and there has been no complaint, disciplinary proceedings or other sort of action against the petitioner to his knowledge.
- 3.. That there had been timely and regular inspection of the Branch Post Office Behta Pakauri and petitioner was never apprised with any sort discrepancy in discharge of his duties.
- 4.. That the service conditions of extra departmental Postal Agents are regulated by the statutory rules known as Extra Departmental Agents (Conduct and Services) Rules 1964, hereinafter referred as " ED Rules ".

- 5.. That rule 6 of E.D.Rules provide that services of an employee who have not already rendered more than three years continuous service from the date of his appointment shall be liable to



B. 27

termination by the appointing authority at any time without notice for generally unsatisfactory work or any administrative ground unconnected with his conduct.

- 6.. That rule 7 of E.D-Rules prescribes three sort of penalties which may be imposed upon an Extra Departmental Agent. These penalties are (i) recovery from allowance of the whole or part of pecuniary loss caused to the Government, (ii) removal from services and (iii) dismissal from service.
- 7.. That rule 8 of such rules provide procedure for imposing a penalty upon an extra departmental agent.
- 8.. That rule 9 of E.D-Rules provide that an Extra Departmental Agent shall be liable to be put off from duty pending enquiry into any complaint or allegation of misconduct against him. During the " Put off from duty " period an Agent is not entitled to any allowance.
- 9.. That on 22.11.1982 petitioner proceeded on leave after getting Smt. Saroj Kumari engaged to work as his substitute on his own risk.



2/21

10.. That petitioner is still continuing on leave from Branch Post Office and while on leave he on 23.11.32 was served with an order Memo No. A-66/E dated 30.10.32 issued by the opposite party no.2 to the effect that petitioner is ordered to be put off duty with effect from the date of service of the Memo upon him.

A true copy of the Memo No. A-66/E dated 30.10.32 issued by the opposite party no.2 received by the petitioner on 23.11.32 is attached herewith as Annexure 1 to this petition.

11.. That after receipt of Annexure I the petitioner contacted the Inspector of Post Offices of his circle as well as he three times met personally with Superintendent of Post Offices in order to know that as to why the order of put off duty has been passed against him but all the time the petitioner was given an evasive oral reply by the opposite party no.2 to the effect that whenever any charges are found against him he will be informed.

12.. That last time petitioner met the opposite party no.2 at his residence who ^wassured the petitioner that the order of put off from duty will be revoked by 3rd or 4th Jan.33.

13.. That again on 7th January 1933 the petitioner went to the office of opposite party no.2 to



42/29

know that as to if the revocation order from put off duty has been passed or not where he was told by the office that no such order has been passed nor any correspondence is going on in this connection.

14.. That petitioner has not been relieved off with the charge of his post as Extra Departmental Branch Post Master Behta Pakauri and work of the Branch Post office is being done by Smt. Saroj Kumari a substitute engaged by the petitioner at his own risk and liability.

15.. That under such circumstances the petitioner has been left with no option and having no other alternate adequate, efficacious and speedy remedy left begs^w prefers this writ petition challenging the legality of order contained in Annexure I on and amongst other-

:: G R O U N D S ::
=====

(A) Because impugned order has been passed in



Handwritten signature and the number 5 in a circle.

know that as to if the revocation order from put off duty has been passed or not where he was told by the office that no such order has been passed nor any correspondence is going on in this connection.

14.. That petitioner has not been relieved off with the charge of his post as Extra Departmental Branch Post Master Behta Pakauri and work of the Branch Post office is being done by Smt. Saroj Kumari a substitute engaged by the petitioner at his own risk and liability.

15.. That under such circumstances the petitioner has been left with no option and having no other alternate adequate, efficacious and speedy remedy left begs^w prefers this writ petition challenging the legality of order contained in Annexure I on and amongst other-



:: G R O U N D S ::

- (A) Because impugned order has been passed in exercise of powers contained under rule 3 of E.D.Rules which confers no power upon any authority to order put off duty in respect of Extra Departmental Postal Agent.

A
9 (6)

- 6 -

- (B) Because in exercise of Rule 9 of E.D.Rules an Extra Departmental Postal Agent may be placed under put off duty only when some enquiry into any complaint or allegation of misconduct is PENDING against him.
- (C) Because in the instant case since there is no mention of pendency of such enquiry in annexure I which besides a non-speaking order cannot be legally passed unless some enquiry is actually PENDING against the Extra-Departmental Postal Agent.
- (D) Because so far petitioner has not been served with any sort of charge - sheet therefore it cannot be said that any enquiry is PENDING against him so as to entitle the opposite party no.2 to pass the impugned order against the petitioner.
- (E) Because to place an extra Departmental Postal Agent under put off duty which amounts to suspension rather more harsh than suspension for indefinite period amounts and leads to arbitrary exercise of powers which can not be permitted to be sustained.

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Wherefore, it is respectfully prayed
this Hon'ble Court may graciously be

pleased to allow this writ petition by issuing --

- (i) a writ direction or order in the nature of certiorari by quashing the order contained in Annexure I to this writ petition.
- (ii) Any other writ direction or order as may be deemed fit under the circumstances of the case may kindly be granted in favour of the petitioner against opp. parties.
- (iii) Cost of this writ petition may kindly be awarded to the petitioner.


Petitioner:

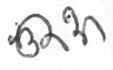
(Suresh Chandra Srivastava)

Through his Counsel:-

LUCKNOW : Dated -

January 11th, 1923.


(A.K. DIXIT)

Advocate, 

High Court, Lucknow.

(A) 8

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

W.P.No. of 1983.

I N R E :

Suresh Chandra Srivastava..

..Petitioner.

Versus.

Union of India & another..

..Opp. parties.

ANNEXURE I.

Indian Posts & Telegraphs Department

Office of the Supdt. of Post Offices Sitapur Dn.261001.

Memo No.A-66/E

Dated at Sitapur the 30.10.82.


Under rule 8 of EDAs(Conduct & Services)Rules 1964,
Sri Suresh Chand Srivastava EDSPM Behta Pakauri in a/c with
Sitapur H.O. is hereby ordered to be put off duty w.e.f.
the date this memo is served on him.

He will not be entitled for any allowance during
such period.

Sd/ x x x

Supdt. of Post offices
Sitapur Dn 261001.

Copy to

- 
1. The IPOs Biswan Sub Dn. Distt. Sitapur for information and n/a, A spare copy is enclosed n/w for delivery to the EDSPM and getting the charge handed over to the Line overseer immediately.
 2. Shri Suresh Chandra Srivastava EDSPM Behtapakauri Distt. Sitapur Distt. Sitapur through the IPOs.
 3. The P.M. Sitapur for information and n/a
 4. O/C
 5. 'F' branch D.O. Sitapur.
 6. Spare

Vaish/

Rajendra May

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12
9

In the Hon'ble High Court of Judicature at Allahabad,
(LUCKNOW BENCH), Lucknow.

W.P.No.
Instt.on

of 1983
Jan. 83

Try. Form No. 385

RECEIPT FOR PAYMENT TO GOVERNMENT

(Form No. I, Chapter III, Paragraph 26, Financial
Handbook, Volume V, Part I)

Receipt No.

070876

Place

Department and office

Received from

the sum of Rupees

on account of

Stamps and Registration Fees

Signature of Government Servant
granting the receipt

Cashier or Accountant.

Designation

.. petitioner.

.. Opp. parties.

on behalf of the petitioner
of writ petition and
on for stay.

I, Suresh Chandra Srivastava aged about 41 years s/o Sri
Kalika Prasad Srivastava r/o village and Post Behta
Pakauri and posted as Extra Departmental Branch Post Master
of Behta Pakauri Branch Post Office Distt. Sitapur do
hereby solemnly affirm and state on oath as under:-

- 1) That deponent being petitioner of this writ petition
is fully conversant with the facts of the case.
- 2) That deponent verifies the contents of paragraph
1 to 14 of the writ petition to be true from
his personal knowledge.

रजनी शर्मा

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10

- 2 -

- 3) That annexure 1 to the writ petition is true copy of its original.
- 4) That deponent verifies the contents of para 15 of the writ petition to be true from his belief.

Deponent

Lucknow: Dated
January 11th, 1983.

(Suresh Chandra Srivastava)

Suresh Chandra Srivastava

Verification



I above named deponent do hereby verify that the contents of paragraphs 1 to 3 of this affidavit are true to my own knowledge and contents of para 4 are believed to be true by me, that no part of it is false and that nothing material has been concealed. So help me God.

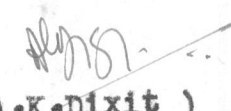
Suresh Chandra Srivastava

Lucknow: Dated
January 11th, 1983.

Deponent

(Suresh Chandra Srivastava)

I know and identify deponent who has signed
on this affidavit in my presence.


(A.K.Dixit)
Advocate,


High Court, Lucknow Bench, Lucknow.

Solemnly affirmed before me on January 11th 1933
at 11.10 a.m./p.m. by Sri Suresh Chandra Srivastava
who is identified by Sri A.K.Dixit Advocate High Court
Allahabad, Lucknow Bench, 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.

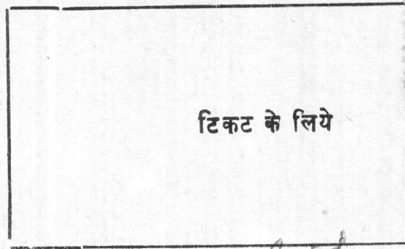
Oath Commissioner
High Court Allahabad,
Lucknow Bench, Lucknow.


OATH COMMISSIONER
High Court (Lucknow Bench)
LUCKNOW

No. 7/277
Date 11.1.33

वकालत नामा

माननीय दंडीयों के सामने जस्टिस के अदालत में २२ सितंबर १९८२ (सितंबर २२)



इजलास श्रीमान्

श्रीमान् चन्द श्रीमान् चन्द
वादो

बनाम

प्रतिवादी
श्रीमान् चन्द श्रीमान् चन्द

दावा

स्मृति

श्रीमान् चन्द श्रीमान् चन्द

उपरोक्त मुकदमे, अपील व निगरानी में अपनी ओर से श्रीमान् चन्द श्रीमान् चन्द को या जिन वकील साहब को श्रीमान् वकील साहब अपनी ओर से भेजें उनको अपना वकील नियत करके वचन देता हूँ और प्रतिज्ञा करता हूँ कि उल्लिखित वकील साहब उपरोक्त मुकदमें व अपील व निगरानी में जो कुछ पैरवी या उत्तर प्रत्युत्तर करें या दावा व अपील व निगरानी व बयान तहरीरी दाखिल करें या कोई कागजात सनद व सनदें इत्यादि पेश करें या वापस लायें या हमारी ओर से इजराय डिगरी कराके वह रुपया जो हमें मिलने को है वसूल करें या राजोनामा या इकबाल दावा हमारी ओर से करें या दाखिल करें या प्रतिवादी द्वारा दाखिल किया हुआ रुपया स्वयं अपने हस्ताक्षरों से हमारी दस्तखत की हुई रसीद द्वारा लेवें या किसी मुकदमे में पंच नियत करें यह सब मय हानि लाभ के जो मिसिल में कार्यवाही करेंगे हमें स्वीकार होगा और नियत मेहनताना न मिलने पर श्रीमान् वकील साहब को अधिकार होगा कि वह उपरोक्त मुकदमे, अपील या निगरानी की पैरवी न करें इसलिये वकालतनामा लिख दिया कि सनद हो और आवश्यक समय पर काम आवे।

Accepted
11/11/82

हस्ताक्षर श्रीमान् चन्द श्रीमान् चन्द

गवाह गवाह

तारीख सन् १९८२ ई०

A/16
1/7/23
98
21

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

192

Writ Petition No.....of 1933

Instt. on Jan. 1933.



Suresh Chandra Srivastava aged about 41 years son of
Sri Kalka Prasad Srivastava, Resident of village and post
Behta Pakauri, Tahsil Biswan, district Sitapur.

.....

.....Petitioner.

Versus.

1. Union of India, through Secretary to Department
of Post and Telegraphs, Ministry of Communication,
New Delhi.

2. Superintendent of Post Offices, Sitapur (U.P.)

.....

.....Opp. parties.

Application for Stay.
=====

It is humbly submitted that for the reasons
stated in the writ petition and the accompanying
affidavit it is most respectfully prayed that

implementation of order No. Memo A-66/E dated
30.10.82 passed by opposite party no.2 (contained
in Annexure I to the writ petition) may kindly be
ordered to be stayed during the pendency of this
writ petition.

Counsel for the applicant


(A. K. DIXIT)

Advocate,

High Court, Lucknow.

LUCKNOW :

Dated:-

January 2, 1983.



[Handwritten initials]

[Handwritten initials]

To,

*80 (Contd)
Please inform with
file today*

The Joint Registrar
Hon'ble High Court of Judicature, Allahabad
Lucknow Bench
Lucknow

*Sir,
Addl. Regr.
16/2/83*

Application for listing up. W.P.

No. 192/83. "Suresh Chand Vs Union of India"

It is submitted that above noted
W.P. was scheduled to be listed up
on 16.2.83 for admission.

Addl Registrar

*This case was
fixed for 16.2.83
in compliance with
court order on
12.1.83 but it
has not been posted
in the cause list.
Learned counsel
requests that the
case may be
listed for 23.2.83.
Submitted for order
16/2/83*

It appears that this W.P. has
been struck off from cause list of
16.2.83 on account of revision of strike
period cause list.

Wherefore it is respectfully requested
that W.P. No. 192/83 may kindly
be listed up in the next week, preferably
for 23.2.83 if possible.

[Handwritten signature]

Counsel for the petitioner
(A. K. Dixit)
Advocate.

[Handwritten signature]
16/2/83.

For the Sr Judge

For order

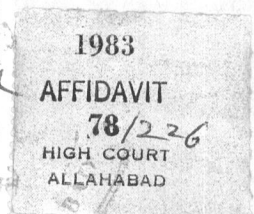
*Addl. Regr.
16/2/83*

*Noted it on 23/2/83
as per order
17/2*

A
32/3
19

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

....
Writ Petition No.192 of 1983
Fixed on 3.3.83.

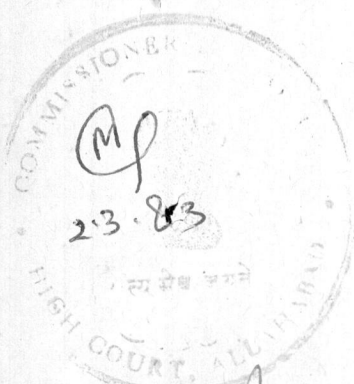


Suresh Chandra SrivastavaPetitioner
Versus
Union of India & others.Opp.Parties.

SUPPLEMENTARY AFFIDAVIT ON BEHALF OF THE
PETITIONER

I, Suresh Chandra Srivastava, aged about 41 years,
son of Sri Kalika Prasad r/o Village Behta Pakauri,
Tahsil Biswan, P.S.Tambore District Sitapur, do
hereby solemnly affirm and state on oath as under:-

1. That the deponent is petitioner in the above-noted case and as such he is fully conversant with the facts of the case deposed hereinafter.
2. That on 23.2.83 the Police Officials of Police Station Tambore District Sitapur visited the home of the deponent and since the deponent was not present in his home he was called upon by the Police of P.S. Tambore on 25.2.83.



2. That on 25.2.83 the deponent went to the Police Station Tambore District Sitapur where ² ~~he~~ a Sub-Inspector of the Police Station asked him to hand over the charge of the Branch Office Behta Pakauri failing which he was threatened by the Police to be locked upon ² and ~~3~~ confined to jail.

4. That deponent has not yet handed over the charge of the Branch Post Office which ^{is} with the substitute Smt. Saroj Kumari as nominated to work as Branch Post ² Master in place of deponent, on his own risk.

Lucknow Dated:

March 2, 1983.

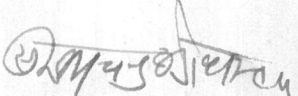

Deponent.

VERIFICATION

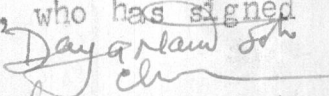
I, the deponent named above, do hereby verify that the contents of paragraphs ² 1 to 4 of this affidavit are true to my own knowledge, those of paragraphs ² x x ² are believed to be true by me. No part of it is false and nothing material has been concealed. So help me God.

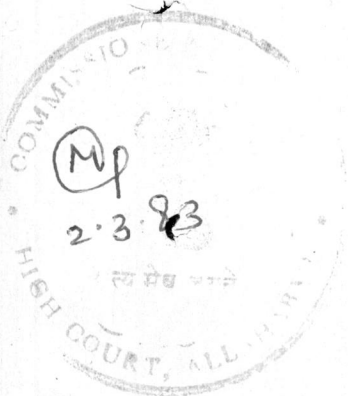
Lucknow Dated:

March 2, 1983.


Deponent.

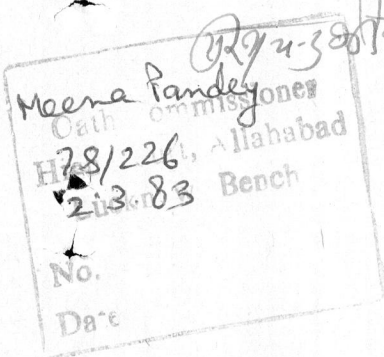
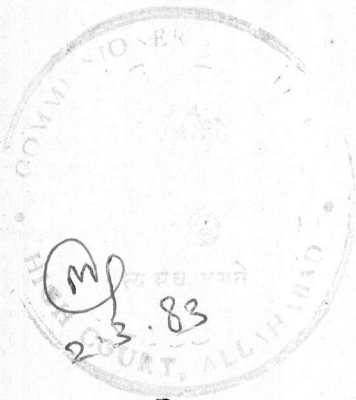
I identify the deponent, who has signed before me.


L. A. K. Dixit.
Advocate.



Solemnly affirmed before me on 23.83
at 2.30 a.m./p.m. by Sri Suresh Chandra Srivastava,
the deponent, who is identified by Sri A.K. Dixit
Advocate, High Court, at Allahabad, Lucknow Bench,
Lucknow.

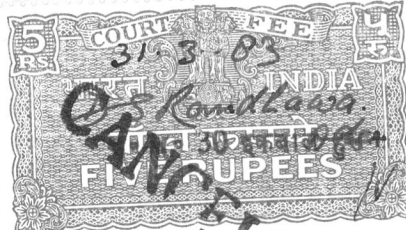
I have satisfied myself by examining the
deponent that he understands the contents of this
affidavit which have been read over and explained
by me.



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

C.M. Application No. 30456 of 1983.



Union of India and another ... Applicants

In re;

Writ Petition No. 192 of 1983

Suresh Chandra Srivastava ... Petitioner

Versus

Union of India and another ... Opposite Parties.

Application for condonation of delay in filing
Counter Affidavit on behalf of Opposite -
Parties Nos. 1 & 2.

The applicants above named, respectfully submit
as under : -

1. That on 12.1.1983, when the Writ Petition came up for hearing regarding admission, three week's time was allowed to the present applicants to file the Counter-Affidavit.
2. That on 15.1.1983 the Counsel wrote to the opposite Parties to send the parawise-comments for preparing the Counter Affidavit.
3. That thereafter the parawise comments were received and the Counter-Affidavit was prepared and it was then sent for vetting to Delhi.

Contd....2

Re: copy

Daya Haul Tank
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L. A. K. Daird
Advised
31/3/83

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Delay is condoned
and work should
be taken on record

X

31.3.83

4. That on 3.3.1983 further 3 week's time was allowed to the Opposite parties to file the counter affidavit and then after receiving the vetted draft Counter Affidavit the fair Counter-Affidavit was prepared and affirmed on 23.3.1983.
5. That a copy of the Counter Affidavit ^{has been} was served on the Counsel for the Petitioner on 31.3.83..
6. That there has been no deliberate delay in filing the Counter Affidavit on the part of the opposite parties or their counsel and the delay is liable to be condoned.

WHEREFORE, it is respectfully prayed that the delay in filing the accompanying Counter-affidavit may kindly be condoned and the same be taken on the record of the case.

D.S. Randhawa
(D.S.RANDHAWA)
Advocate

(Senior Standing Counsel -
Central Government)

Lucknow:

Dated:

~~April~~ March 31, 1983.

Counsel for the Applicants
(Opposite Parties Nos. 1 & 2
in the Writ Petition).

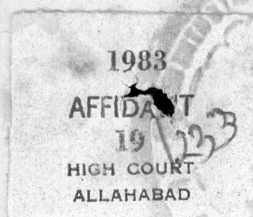
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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH, LUCKNOW.

Writ Petition No. ^K192^K of 1983



Suresh Chandra Srivastava

... .. Petitioner

Versus

Union of India and another

... .. Opp. Parties

COUNTER AFFIDAVIT ON BEHALF OF O.P.No.1 & 2

I, Sufailashma aged about ⁵² years, son of
Sri Alley Mohammad Supdt. of Post Offices, Sitapur Division,
Distt. Sitapur, deponent do hereby solemnly affirm and state
on oath as under :-

1. That the deponent is the Opposite Party No.2 and is well conversant with the facts deposed hereunder.
2. That before replying to the contents of the Writ Petition it is necessary to give a brief facts of the case. The petitioner was E.D.B.P.M., Behtapakauri (Tambaur) on 11.1.71 vide Inspector of Post Offices, Biswan Memo No. A Behtapakauri dated 11.1.71 which was subsequently approved by the Office of the deponent vide office memo No.A/97/E dated 2.2.1971 purely on temporary basis. The Petitioner never informed the postal authorities as to when he was appointed as a teacher. The Petitioner has concealed the fact of working as Branch Post Master, Behtapakauri at the time of his appointment as a teacher in the Education Department.
3. That later on the E.D. Branch office, Behtapakauri was converted into E.D. Sub-Office on 22.2.1980 vide Post Master General, U.P., Lucknow letter No.Plg/M-32/11061

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dated 8.11.1978. The working hours of the Branch Office were also changed on upgradation. The E.D. Sub Office was ordered to be opened for five hours from 11.00 Hrs. to 16.00 Hrs.

4. That a complaint regarding non-functioning of E.D. Sub-Office properly was made by Sarva Sri Gur Saran, resident of Behtapakauri and others alleging therein that the Petitioner is holding the charge of two posts i.e., E.D. Sub-Post Master and Teacher, Primary School, Behtapakauri and as such the E.D. Sub-Office is not functioning properly. On preliminary enquiry it was found that the petitioner is working as E.D. Sub-Post Master and Teacher while working hours of Post Office and School clash to each other and as such during the teaching hours, the work of the post office especially telephone remained unattended as the Post Office and the Primary School are functioning at two different places.]
5. That under these circumstances, the petitioner was asked to resign from either of the posts vide letter No.A/66/E dated 2.3.80 but the petitioner did not give any reply inspite of several reminders and, as such, it was felt that he was not willing to leave any post and, therefore, he was put off from duty in the public interest vide Memo No.A/66/E dated 30.10.82 impugned in this Writ Petition.
6. That the contents of para 1 of the Writ Petition are admitted.
7. That the contents of para 2 of the Writ Petition are not denied except that a complaint as stated above was received against the Petitioner.
8. That the contents of para 3 of the Writ Petition are not



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admitted as alleged and the discrepancy, as stated earlier, was found against him and he was asked to explain the matter.

9. That the contents of paras 4 to 8 of the Writ Petition need no reply as they relate to the legal positions which can be perused. However, it is stated that the impugned order dated 30.10.1982 was actually issued under Rule 9 of the P&T Extra Deparemental Agents (Conduct & Service) Rules, 1964. Sub-rule (i) of Rule 9 provides that "Pending an inquiry into any complaint or allegation of misconduct against an employee, the appointing authority or an authority to which the appointing authority is subordinate may put him off duty ---."
10. That the contents of para 9 of the Writ Petition are denied and it is stated that the Petitioner absented himself from duty with effect from 22.11.82 to avoid transfer of charge. Actually, no leave was sanctioned by the appointing authority nor any substitute was approved by the Competent authority and, as such, the engagement of Smt. Saroj Kumar, who is the wife of the petitioner is absolutely improper and illegal.
11. That the contents of para 10 of the Writ Petition are denied and it is stated that the petitioner absented himself from duty from the Sub-Post Office concerned after handing over the charge of the office in an unauthorised manner to unauthorised person. During his absence from duty the impugned order dated 30.10.82 under rule 9 of the E.D.A. (C. & S) Rules 1964 was served on 23.11.1982 putting off the petitioner from duty, but there was an error in quoting the rule 8 instead of Rule 9 on account of some inadvertance.
12. That the contents of paras 11 to 13 of the Writ Petition



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are absolutely false and have been concocted by the Petitioner in order to give colour to the case and as such these are denied. Neither the petitioner ever met or enquired from the deponent nor any kind of assurance was ever given to him.

13. That the contents of para 14 of the Writ Petition are denied. The petitioner absented himself from duty to avoid transfer of charge of E.D. SPM Behtapakauri and he continued teaching at Primary School, Behtapakauri. After service of impugned order on 23.11.82 the petitioner is deemed to have been put off from duty. The petitioner has neither sought prior approval regarding the engagement of the substitute nor any leave was granted to him.
14. That the deponent has been advised to state that the Petitioner has not availed of alternate remedy by way of appeal under Rule 10 of the E.D.A. (Conduct & Service) Rules 1964. Sub-Rule (i) of Rule 10 is reproduced below:
" An employee may appeal against an order putting him off duty to the authority, to which the authority passing the order regarding putting him off duty is immediately subordinate. "
15. That the deponent has been advised to state that the grounds ~~xxx~~ as taken in para 15 of the Writ Petition are not tenable in law. No case has been made out by the Petitioner for any relief under Article 226 of the Constitution of India. The Writ Petition being without any merit is liable to be dismissed with costs.

LUCKNOW:

Dated: 23.3.83

DEPONENT.

VERIFICATION:

I, the above named deponent do hereby verify that the

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contents of paragraphs 1(one) ~~to paragraphs~~ 4
are true to my own knowledge, the contents of paragraphs 2
to 8, 10 & 13 paragraphs are true to my knowledge derived from
office record and the contents of paragraphs _____ to
paragraphs 9, 14 & 15 are true to my knowledge based on legal
advice. No part of this affidavit is false and nothing material
has been concealed, So help me God.

LUCKNOW: ✓

Dated: 23/3/83

Deponent.

I identify the deponent, who has signed
before me.

Advocate.

(D.S. RANDHAWA)

Solemnly affirmed before me on 23.3.83
at 11.30 A.M./P.M. by Sri Z. Sharma
the deponent who has been identified by
Sri D.S. Randhawa
Advocate, High Court Allahabad (Lucknow Bench)

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.



Commissioner
High Court, (Lucknow Bench)
LUCKNOW
19/233
23/3/83

Memo

IN THE HON'BLE HIGH COURT OF JUDICATURE
AT ALLAHABAD-LUCK NOW BENCH
LUCKNOW

W.P. No 192 of 1903

Suresh Chandra Srivastava Petitioner,

versus

Union of India & others Opposite Parties.

REGISTRAR,

I AM appearing as the ^{Senior} Central Government
Standing Counsel, on behalf of Applicant/
Respondent/Opposite Parties. No. 1 and 2.

Date d. 25.3.1903

(D. S. Randhawa)
Senior Central Government
Standing Counsel.

Diwan Singh Randhawa

Senior Standing Counsel,
Central Government,
Allahabad High Court,
(Lucknow Bench)
LUCKNOW.

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C.M. No. 5103/1983

In The Hon'ble High Court of Judicature at Allahabad
Lucknow Bench: Lucknow.

192-13

W. P. 182 of 1983



Suresh Chand Srivastava - Petitioner

VS

Union of India & othrs - Opp. Parties.

Application for Condonation of delay
in filing Rejoinder Affidavit

On account of papers
being mixed up in my chambers,
the Rejoinder could not be filed in
time, though it was prepared.

Wherefore it is respectfully
prayed that delay in filing the
Same may kindly be condoned
and RA may kindly be permitted
to be brought on records.

Alm

Counsel for Petitioner

A. K. Dixit
Advocate.

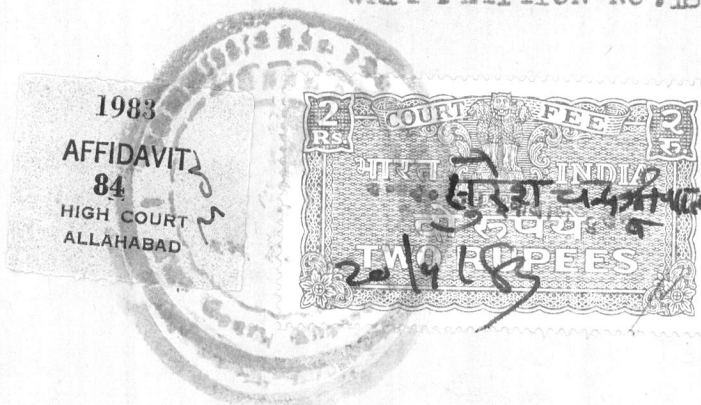
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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW.

....

WRIT PETITION NO.182 of 1983



Suresh Chand Srivastava ... Petitioner
Versus
Union of India & others. ... Opp. Parties.

REJOINDER AFFIDAVIT ON BEHALF OF PETITIONER
IN REPLY TO THE COUNTER AFFIDAVIT
OF OPPOSITE PARTIES.

I, Suresh Chand Srivastava, aged about 41 years, son of Sri Kalika Prasad r/o Village and Post Behta Pakauri, Tahsil Biswan, P.S. Tambore Distt. Sitapur, do hereby solemnly affirm and state on oath as under:-

1. That the deponent being petitioner to the aforesaid writ petition is fully conversant with the facts deposed hereunder.

2. That on 21.3.83 the copy of the counter affidavit was received by the clerk of the deponent's counsel and as per orders of the court dated 3.3.83



20/4/83

the deponent is filing this rejoinder affidavit within two weeks from 31.3.83.

3. That contents of para 1 to counter affidavit need no reply.

3. That contents of para 2 to counter affidavit are not admitted as written. In view of admission of contents of para 2 to writ petition (vide para 7 of counter affidavit) it is no more in dispute that petitioner is continuously working as Extra Departmental Branch Post Master since 11.1.71. In view of rule 6 to E.D. Rules an Extra Departmental Agent who renders more than 3 years of continuous service acquires the status of a person holding confirmed civil Post.

So far as question of teaching job by the petitioner is concerned the necessary details sufficient to controvert the allegation of opposite parties are given below:

(i) That perusal of para 284 and 572-A to Post and Telegraph Manual Vol. IV makes it clear that Branch Office of a Extra Departmental Post Office should be placed in charge of such Agents who have independent source of income such as school master, station Master, Shop Keeper etc.

(ii) That thus deponent was assigned with the



अधिवक्ता 20/4/83

[Handwritten signature]

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Extra work of Branch Post Office by the opposite parties keeping in view of his teaching job as an extra qualification under rules. Perusal of Inspection Reports dated 1.11.74, 19.10.76, 28.12.78, and 29.12.79 conducted by the Inspector of Post Offices go to establish finally that deponent never concealed the fact of his teaching job and the postal authorities never took exception of it. The true copies of such inspection reports are attached herewith as Annexure R-1 to R-4 to this affidavit.

(iii) That the charge of Extra Departmental Post Master of Behta Pakauri Branch Post Office has ever been with the School Teachers from its very inception. When Branch Post Office was started one Sri Kalika Prasad, teacher of Junior High School Tambore was holding the post of Extra Departmental Branch Post Master after his death Sri Pyarey Lal a teacher in Behta Pakauri had been holding this post, thereafter deponent is holding such post without concealing any facts.

(iv) That Sri Shhotan Shah holding the post of Extra Departmental sub-Post Master (EdSPM) of Dhakhhera, Branch sub post office is full time teacher at Primary Pathshala Dhakhhera. One person known as Maulvi Saheb who is resident of Mahmoodabad is holding the post of EDSPM Bhethra Madho Branch sub post Office. Kunj Behari Lal resident of village



20/1/83

Dhakhera is posted as Assistant Teacher Primary School Marsanda and is also working as Extra Departmental Branch Post Master at Marsanda Branch Post Office. Therefore, the contention of opposite parties that a teacher can not hold the post of Extra Departmental Sub-Post Master is not only contrary to rules/Administrative instructions but is violative to ~~Article 14~~ 14 and 16 to the constitution.

4. That the contents of para 3 to counter affidavit are not disputed.

5. That the contents of para 4 to counter affidavit are denied. No such complaint of Sri Gur Saran has ever been shown or brought to the knowledge of the deponent.

6. That contents of para 5 to counter affidavit are ~~denied~~ ~~xxxxxxx~~ not admitted as written. The opposite parties have no legal sanction to ask for resignation from the deponent. Since deponent has committed no misconduct the action of put off from duty is arbitrary.

7. That the contents of para 6 and 7 to the counter affidavit need no reply.

8. That the contents of para 8 to the counter affidavit are denied in view of contention raised in para 3 to the rejoinder affidavit.



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9. That the contents of para 9 to the counter affidavit are not admitted as written.

10. That the contents of para 10 to the counter affidavit are denied. Petitioner never absented himself from duty, instead he proceeded on leave and made arrangements of his substitute under para 57 2A (b) of P & T Manual Vol.IV.

11. That the contents of para 11 to the counter affidavit are denied. Work of Branch Post Office is regularly being done by Smt. Suraj Kumari to the knowledge of opposite parties to whom all the postal Articles are delivered, the accounts are maintained the checking is being done, and in absence of specific sanction, which is the business of opposite parties, she has been recognised as such by implication. The opposite parties have never communicated their disapproval about working of Smt. Suraj Kumari as substitute.

12. That the contents of para 12 to the counter affidavit are denied and facts stated in para 11 to 13 of the writ petition are reiterated.

13. That the contents of para 13 to the counter affidavit are denied in view of detailed reply furnished in para 3, 10 and 11 above.



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14. That the contents of para 14 to the counter affidavit are not admitted as written. Mere provision of a departmental appeal is no bar to invoke the jurisdiction of this Hon'ble Court under Article 226 to the constitution of India. The remedy by way of departmental appeal is neither speedy nor effective it is only a summary remedy which does not constitute a bar. The impugned order is wholly jurisdiction (as it has been passed in exercise of Rule 8) and without any material is not only wholly unjustified but it infringes Article 14 and 16 to the constitution, therefore, mere existence of alternate remedy by way of departmental appeal can not come in way of the deponent.

It is also submitted that to put off an Extra Departmental Postal Agent from duty amounts to suspension" in effect rather move harass than 'suspension' (because an E.D. Agent is not entitled to any short of allowance during put off period) this period must be reasonable one. Since 30.10.82 till now no charge sheet has been served, thus there has been inordinate delay of about six months. The impugned order itself is non speaking and the ground for put off from duty, as disclosed for the first time before this Hon'ble Court does not amount to misconduct in any way. Only act of misconduct can give rise to action for put off from duty.

15. That the contents of para 15 to the counter affidavit are denied. Deponent is entitled to the
relief xxxxxxxx

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relief prayed for.

Lucknow Dated:

April 20, 1983.

Signature of Deponent

Deponent.

VERIFICATION

I, abovenamed deponent do hereby verify that the contents of paragraphs 1 to 15 are true to my own knowledge, the contents of paragraphs to are true to my knowledge based on legal advise. No part of it is false and nothing material has been concealed. So help me God.

Lucknow Dated:

April 20, 1983.

Signature of Deponent

Deponent.

I identify the deponent, who has signed before me.

Jay Chand Bora
Advocate.

Solemnly affirmed before me on 20-4-1983 at 1030 a.m./p.m. by Sri Suresh Chand Srivastava

to the deponent, who is identified by Sri D.N. Jashid to the A.K. Dixit. Achal Advocate, High Court, at Allahabad.

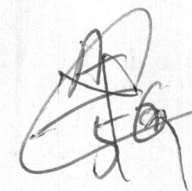
I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read over and explained by me.

Signature



JOINT COMMISSIONER
Dist. Court (Lucknow Bench)
LUCKNOW
84/32
20-4-1983

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इन दि आनरेबुल हाई कोर्ट आफ जूडीकेचर ऐट इलाहाबाद,
लखनऊ बेंच, लखनऊ ।

रिट पिटीशन नं० 192 आफ 1983

सुरेश चन्द्र श्रीवास्तव - - - - - पिटीशनर

वर्से स

यूनियन आफ इन्डिया अदर्स - - - - - अपोजीट पार्टीज

अनेजर नम्बर-1

आई आर बेहटा पकौड़ी /4 तम्बौर 1/11/74

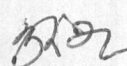
आज दिनांक 1-11-74 को बेहटा पकौड़ी शाखा डाकघर का वार्षिक निरीक्षण किया । यह डाक घर तम्बौर उप डाक घर के लेखान्तर्गत आता है । इस डाकघर का पिछला निरीक्षण डाक निरीक्षक सीरी उत्तर द्वारा दिनांक 27- 3-74 को हुआ था । श्री सुरेश कुमार यहाँ पर स शाखा डाकपाल के पद पर कार्यकरते थ चले जा रहे हैं। इनकी कृषि व अध्यापन कार्य से 200/- क का मासिक आय है ।

2- बेहटा की डाक शाखा डाक पाल द्वारा रोज वितरित की जाती है । डाक आ आदान प्रदान ई डी आर रिहार द्वारा तम्बौर से होता है । यहाँ पर डाक आने का समय 13.30 बजे व जाने का समय 4.30 बजे है वितरण का समय 1405 बजे है । कार्य काल 1100 से 1400 बजे है ।

3- केश व टिकट पोस्ट कार्ड के बकाया की जाँच की गई । ठीक पाये गये ।

4- निर्धारित राशिआया निम्नलिखित है । शाखा डाकपाल उन्हीं के अनुसार नियम पालन करें । डाक अधीक्षक कृपया स्वीकृति दें ।





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न्यूनतम	अधिकतम	पोस्टेज	रसीदी	डाक टिकट
100/-	125/-	80/-	15/-	5/-

5- बी०ओ० स्लिप बी०ओ० फाउन्ट बी०ओ० जरनल आदि की जाँच की गई, निम्न रिक्त वृत्तियाँ पाई गई ।

§1§ दिनांक 20-4-74 को इस डाकधर को 40/- रु० केश भेजा गया किन्तु उपडाकपाल ने बी०ओ० स्लिप के कालम §6§ में कोई प्रविष्टि नहीं की न ही केश भेजने व केश वेग का वजन करने के हस्ताक्षर पाये गये । लेखाडाकधर ध्यान दें ।

§2§ दिनांक 18-5-74 को बी०ओ० स्लिप द्वारा भेजी गई वस्तुओं के जारी डाकधरों का नाम लेखा डाकधर ने दर्ज नहीं किया था ।

§3§ इसी प्रकार दिनांक 18-6-74 को भेजी गई बीमा कृत बी०पी० से० 1280 कीमती 140/-रु० का वजन बी०ओ० स्लिप में दर्ज नहीं पाया गया । लेखा डाकधर ध्यान दें ।

§4§ दिनांक 10-6-74 को प्राप्त वस्तुओं के न बटने का कारण बी०ओ० जरनल में दर्ज नहीं किया गया कालम 5 रिक्त पाया गया ।

§5§ यहाँ पर ब्याज हेतु प्राप्त पास बुकों की रसीदें §एस०बी० 78§ जमा कतबों को नहीं दी जा रही है और न ही पास वितरण की तारीख बी०ओ० जरनल अथवा रजिस्टर में दर्ज की जा रही है । समझाया गया ।

6- बी०ओ० रसीद बुकों की जाँच की गई , निम्न रसीदें पिछले निरीक्षण के बाद से जारी की गई । लेखा डाकधर सत्यापित करें । 3 दि० 13-4-74 से 25 दि० 17-10-74

7- निम्न पास बुकें प्राप्त करके उनके बैलेन्स की जाँच की गई । प्रधान डाकधर को सत्यापन के लिये लिखा गया ।

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855268	अन 25-2-74 20-4-74	601-81
855201	24-7-74	900-70
855308	24-9-74	34-00
855483	20-9-74	8-10
855137	13-9-73 20-7-73	591-00
855286	18-9-74	2220-95
855861	20-8-74	100-05
855204	16-8-74	637-40
855148	9-10-74	5016-43
8556016	9-10-74	460-00
218 7130031	अप/टू 30-10-74	80-00 नो डिफेन्स
7130012	30-10-74	320-00 - ,, -
7130023	30-10-74	260-00 - ,, -
7130026	30-10-74	200-00 - तदेव -
7130033	30-10-74	140-00 - तदेव -

8- डाक बुक की जाँच की गई , बन्द बीजक 73-74 प्राप्त हो चुका है। निम्न सामान के लिए माँग पत्र भेजा गया ।

- 1- बीबी0 इंक 1/2 किलो 3. लेटर बाक्स 3 ।
- 2- डी0सी0 पाइन 4. सैज x चेयर।

9- इस डाकघर के लिए एक मेज, एक कुर्सी एक स्टूल व एक रिकर्ड बाक्स की आवश्यकता है। डाक अधीक्षक सीतापुर कृपया भेजने की व्यवस्था करें ।

10- उपरोक्त पंक्तियों की तामीली 15 दिन के अन्द मुझे भेज दो जाय।

सत्य- प्रतिलिपि

ह0-अपठनीय,
डाक निरीक्षक
सीरी उत्तर उपखंड 8 सीरी।

क्रेम



59

59

इन दि आनरेबल हाई कोर्ट आफ जूडिकेचर ऐट इलाहाबाद,
लखनऊ बेन्च, लखनऊ ।

रिट पिटीशन नं० 192 आफ 1983

सुरेश चन्द्र श्रीवास्तव - - - - - पिटीशानर

वर्सेस

यूनियन आफ इन्डिया अदर्स - - - - - अपोजीट

अनेजर नम्बर - 2

आई आर/ बेहटा पकौड़ी/ 76-77

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आज दिनांक 19-10-76 को बेहटा पकौड़ी बी०ओ० जिसका ए०ओ० तम्बोर है निरीक्षण किया। पूर्व निरीक्षण दिनांक 16-9-75 को 1880॥एन॥ सीरी ने किया था श्री सुरेश चन्द्र श्रीवास्तव जिनकी अध्यापन तथा कृषि से 4000/- वार्षिक आय होगी। डाक का आदान प्रदान ई०डी०आर० रिहार द्वारा किया जाता है। डाक आने का समय 13.30 जाने का 11.30 व वितरण 14.05 पर है। बी०पी० एम० ग्राम में ही वितरण कार्य करते हैं।

2- नकद धन तथा डाक टिकट आदि की जाँच की तथा 202-89, ठीक पाये।

3- अमानत में एक डब्बू/डी 200/- का है जो धन न होने से भुगतान नहीं हुआ। धन माँगा जाय।

4- बी०ओ० स्लिप, अकाउन्ट, जरनल आदि को जाँच के तथा निम्न परिणाम रहा।

॥अ॥ 6-9-76 को रजिस्ट्री की रसीदे तारीख मोहर से नहीं छापी गई है। बी०डी०ओ० के नाम के रजिस्टर्ड पत्र कुवर पत्र वाहक

-----2/-

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को वितरित किये गये है परन्तु बी०डी० ओ० ने इस सम्बन्ध में कोई लिखित अधिकार नहीं दिया है जिसके बिना वितरण अनुचित है ।

॥ब॥ बी०ओ० जर्नल पर प्रतिदिन बी०पी०एम० अपना हस्ताक्षर किया करें ।

॥स॥ बी०ओ० डी०/सी में बचत बैंक के अतिरिक्त और खानों का योग नहीं किया गया है। इसे पूरा किया जाय ।

॥द॥ दिनांक 16-10-76 को 51 रु० पर 96 /- चढ़कर आया है परन्तु 91/- ही प्राप्त हुआ । इस 5/- को 18/10 में भेजा गया। एस०पी०एम० उत्तर देंगे ।

5॥अ॥ बी०ओ० आर 7 डके दि० 20-9-75 से 100 दि० 21-9-76 तथा । दि० 22-9-76 से 8 दि० 18-10-76 तक जारी तथा 9 से 100 तक सादी है। ए०ओ० प्रमाणित करें ।

॥ब॥ एस०पी०एम० तम्बौर ने एम०ओ० आर० 3497 दि० 29-7-76 पर काट पीट की है । रसीद पहले कार्बन से थी फिर उस पर पेन से लिखा गया । कारण स्पष्ट किया जाय ।

6- त्रुटि पुस्तक पर उचित प्रतिलियाँ की गई है । रिहार के सरके डाक देर से लाने की कई त्रुटियाँ हैं उसके विरुद्ध कार्यवाही होगी ।

7- मोहर छाप किताब पर मोहरे स्पष्ट नहीं है । इनको रोज साफ कर लगाया जाय ।

8- एस०बी०पी०आर० 29 दि० 22-9-75 से 50 दि० 11-12-75 तथा । दि० 11-12-75 से 41 दि० 9-7-76 तक जारी है । 42 से 50 तक सादी है। 40 प्रमाणित करें ।

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॥ब॥ पी०आर० 38 दू 4। एण्ड किताब बी०पी०एम० के अनुसार ए० ओ० को भेजी गई परन्तु रसीद पर कोई रिमार्क नहीं है। इसे लिखा जाय ।

॥स॥ पी०आर० 37 पर तारीख मोहर नहीं लगायी गई है । पास बुक प्राप्त कर्ता को दी जा चुकी है परन्तु जमाकर्ता के हस्ताक्षर नहीं है। इनको कराया जाय ।

9- नमूना हस्ताक्षर ॥एस बी॥ देखा । किसी भी हस्ताक्षर को बी०एम० ने प्रमाणित नहीं किया है । उन्हें बताया गया ।

10- निम्न पासबुकों के शेष धन की जाँच की गई 2-00 प्रमाणित करें ।

855268	21-6-76	688-41
855483	30-11-74	20- -
855235ए	17-7-76	512-70
855806	19-7-76	525-50
856296	1-9-76	30- -
8562 37	3-7-76	6-65
855207	9-10-76	2608-95
855936	1-10-76	7 - -
856275	4-10-76	33 - -
8552 01	18-10-76	124-20

11- टाइम डिस्पोजिट के खातों के इंदराज एस०बी० जर्नल में आर०डी० के साथ दिखाया गया है । इसका जर्नल अलग कर लिया जाय ।

12- स्टॉक बुक देखा इवी-1 एम 31-3-75 की इन्द्राज को । डी०ओ० से एक मेज द्वारा एस०पी०एम० लहरपुर 12/21-9-78 को प्रेषित

-----4/-

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दिखाई गई है। परन्तु वह यहाँ नहीं आयी है। एस०पी०एम० लहरपुर
से इसका विवरण डी०ओ० पूछे। 13-

13- इन्वीनिवेशन व वाई यू०आर०देखकर इसे नत्थी कर रखा
जाय।

14- निम्न सामान के लिए इन्डोर्स भेजा

ब्रेस्टल ब्रुश - 1

बी०एस०इंक 1/2 किलो

15- इस डाकघर के निकट के गाँव तम्बौर से बटते हैं तथा आगे के
गाँव भी जबकि वे यहाँ से सुविधानुसार बट सकते हैं। यह कार्य बी०
पी०एम० डेली एलाउन्स के साथ कर सकते हैं। अलग से प्रस्ताव भेजा।

सुमली, महमदपुर, सिकरोहर खुर्द, सिकरोहर काँ, चादी खेरा
सोहरिया उसिया उपरोक्त सभी गाँव लगभग 1 से 1.5 कि०मी० है।

16- परिपालन रिपोर्ट 15 दिन में भेजी जाय।

ह०- अपठनीय

निरीक्षक डाक विभाग,
बिसवाँ, उप प्रखण्ड,
बिसवाँ सोतापुर ॥

दिनांक 19-10-76

क०श

सत्य - प्रतिलिपि



76
A/15

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

.....

WRIT PETITION NO.192 of 1983

Suresh Chandra Srivastava ... Petitioner
Versus
Union of India & others. ... Opp.Parties.

ANNEXURE NO.3

Inspected Behta BO in account with Tambaur S.O.(Sitapur) on 28.12.78. It was last inspected by the I.P.Os. Biswan on 28.12.78 Sri Suresh Chandra Srivastava a local Primary School Teacher is the B.P.M. since 11.1.71. He has agriculture land in his own name. He also performs the delivery work in the locality only. No other village is attached to this BO. Though the mails are scheduled to be received at 14 hrs. and despatched at 11.30 hrs. but the BPM. reports that usually the mails are received at this BO at 16 hrs to 16.30 hrs. Account office should ensure punctual despatch of mails. The mails are conveyed through the EDR Rihar.

2. Verified the cash and stamps and found Rs.5.60 short which were made good by the BPM on the spot. He was cautioned.

(ii) BO slip received on 27.12.78 was having a difference of only 50 paise in the balance shown by

20/1/83

the account office for 23.12.78. A revised slip should have been called for.

(iii) A sum of Rs.800/- has been shown as received from A/O on 26.12.78 but the BO slip of the date is reported to have not been received. The B.P.M. had noted an error book. In such cases, he should have also sent an extract of it to IPOs and SPOs office. My office should confirm the amount of remittance received on 26.12.78 from S.P.M. Tambaur L' clerk should take up.

(iv) A withdrawal of Rs.1580/- in account No.8056616 was found pending for payment since 26.12.78 the corresponding cash balance. The B.P.M. should take efforts to pay it for disposing of the cash.

(v) One bundle of MO forms was found in stock

3. On examining the Boslips on 5 dates, with the BO journal and BO account the following was revealed:-

(1) On 12.1.78, the balance acknowledged by the A/O was Rs.2181.25 while it should have been 2781.55 BPM should have challenged it. It was also observed that previously the A/O was prompt in accounting for the Bo daily account of this office while at present a transit of 2 days has cropped up. The S.P.M. Tambaur and IPOs Biswan should explain the reasons thereof. L' branch should pursue.



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(ii) A difference of Rs.100/- was observed in the balance acknowledged by the A/O in the BO slip dated 7.4.78. The BPM. failed to challenge it. The account office failed to note the serial number of 100 Rs. denomination C.Notes remitted to this BO on 7.4.78.

(iii) A VPP No.23010 for Rs.36.96 was received on 23.10.78 and was reported as delivered on 28.10.78 but it was not mentioned in deposit in the BO journal daily with date. The BPM. was warned.

(iv) The BO journal is not maintained in the prescribed register. The pass books should also be shown as other articles kept in deposit.

(v) Reasons for non delivery of the articles and non payment of the Mosand S.B.withdrawal mist also be noted in the BO journal.

(vi) I am glad to observe that the BPM. is showing the full particulars of the liabilities held each day in his BO Journal.

4. That office is provided with the PCO facility and the instrument is in working order as per conversation with the SPM. Tambaur.

(ii) Two calls were booked, one in the month of Feb.78 and the other in the month of March 78 with a total revenue of Rs.19/- since last inspection.

22/3

5. The present BPM is a Primary School Teacher and this BO is to be upgraded into EDSO very shortly. The timings of this BO will clash with the duties of the BPM as a teacher. He should as directed must clearly decide whether he is to continue as teacher or to be appointed as ED BPM. either of them. The IPOs must ensure about the willingness of the BPM., ~~either or of them~~ within a fortnight. My office should also check up all the cases of such nature to find out whether the existing BPMs are not employed regularly in other institutions so that suitable substitute may be appointed vice them. A branch should check up his records.

6. There was no hours of business or memo of authorised balance showing limit of remittance in a cash bag. My office should supply one such memo for information of the BPM. He reports that the remittance limit is Rs.1500/-.

7. Examined the BO receipts for the last inspection. The following BORs have been issued since then:-

No.74 dt.29.12.77 to 100 dt. 18.2.78.

1 " 18.2.78 to 100 dated 9.12.78

1 " 9.12.78 to 9 dated 27.12.78

10 to 100 are blank. A/O should verified them and report.

(ii) On 20.4.78, 2 MOs No.24 and 25 have been issued for the total value of Rs.430.50 but the BPM has accounted for 431.50 viz. Rs.1/- as excess. The A/C office



should have challenged it.

(iii) MOs received from the account office should be date stamped on the date of its receipt, by the BPM.

(iv) Most of the date stamps of the account office on the MO receipts either are blurred or illegible. SPM Tambaur should work carefully.

(v) The Moreceipts from account office for CF No.27 dated 24.4.78, 68 dated 18.8.78, 4 dt. 23.12.78, 5 dated 26/12 and 6 to 9 dated 27.12.78 are wanting. These should be called for.

8. There are 3 letters boxes in the locality which are without hours plates. IPOs Biswan should direct the O/S for provision of the hrs plates in all the LBs.

9. Half yearly and enumeration returns have not been kept by the BPM. He was instructed to have a copy of the same.

10. The BPM has not mentioned the date of submission of the compliance report of the last IR.

11. Serial number should also be noted in the error book in future.

12. The book of post marks was having most illegible impressions. The BPM was instructed to place rubber

202 2



sheet below impressions. The BPM. was instructed to police rubber sheet below it at the time of obtaining the impressions. The perusal of the book of the post marks revealed that these are not being washed or cleaned. These were found very dirty. These should be cleaned now.

13. Examined the SB PR issued after the last inspection as under:-

Book No. AH 253780 No.4 dt.29.12.77 to 50 dt.10.6.78
25377 1" 28.6.78 to 19 dt. 13.12.78
20 to 50 were found & xxxxxxxx
blank.

HO and the Account Office should verify & report.

(ii) The L.TIs of the depositors obtained on the reverse of SBPRs at the time of delivery of pass books are not being got identified.

(iii) On the reverse of SB PR No.36 dated 23.3.78 for Rs.3200/- the depositor has acknowledged the pass book for Rs.2300/- only in words and figures both. The account office should verify the particulars and the mail O/S should verify the pass book from the depositor.

(iv) The pass book 856644 vice PR No.43 dated 28.4.78 was delivered to the messenger of the depositor. It is incorrect and should be avoided in future.



Handwritten signature or initials at the bottom right of the page.

14. I was glad to observe that the BPM has maintained his specimen signatures book and records very neatly. However in few cases, his counter signatures on the specimen slips were wanting. He was suitably instructed.

15. Notices were issued in form SB.46 to the following 10 SB depositors and sent to the O/S (Sri Babu Lal) W Jahangirabad for delivery to them. The postmaster Sitapur should also verify the particulars given as under and report result:-

Account No.	DLT	Balance	Address of Depositor
855764	27.12.78	6845.30	Shaktinarain Bhatnagar Behta.
855279	"	97.53	Anand Murti, Behta Pakauri.
855286	26.12.78	1441.05	Ramlakhan Misra Teacher Behta.
855310	21.12.78	703.28	Brij Mohanlal R/o Chandkhara Poz Tambaur.
855209	20.12.78	10059.10	Chandrani C/o Sri Vidyadhar Behta.
855790	14.12.78	2589.10	Asharfilal r/o Sumli PO Tambaur.
855235	4.12.78	7.43.50	Dharnidhar, Behta
855317	27.11.78	100.55	Genl.Fund, Pry School Vill. Rajnapur PO Sujawalpur Tambaur
855207	23.11.78	13.10	Uma Shanker R/o Behra PO Tambaur
855330	23.11.78	100x 7.80	Bal Mukund r/o Behta.

16. SB 28 Book No. AH 3584 was found begining from No.7 and its original receipt was wanting. The book was containing upto serial No.37 and for this



no 22

serial the duplicate and triplicate copies were also wanting. The BPM reports that it was received incomplete and he has issued a single copy without carbon process to the depositors. He reports that the A/O did not send it duly invoiced on the BO slip. It is most irregular and risky both. The IPOs Biswan must find out the reasons from AO for supplying a defective book with incomplete receipts. Its use was explained to the BPM. The received obtained from the depositors should not be filed at the BO but forwarded to A/O where an index is being kept. The IPOs must see whether the AO is keeping any index for SB.28 used at BOs under his jurisdiction. My office should issue instructions to all the SOs in the Dvn. and the SDO must also ensure its proper maintenance while visit to offices in this division. S.B clerk of my office should take necessary action.

17. No SB.100 receipt book has been supplied to this BO as reported by the BPM. A/O should confirm.

18. The closing invoice card for 77.78 was on record. It reveals that no supply has been made during that period. The BPM. reports that during the current year 78.79 nothing has been supplied to his office so far.

19. The following articles may be indented by the IPOs Biswan for the use of this BO:-

1. Small time stamp box 1.

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-9-

2. Bristal Brush 1
3. Stamping Ink 1 Kg.
4. Carbon Papers 25 sheets.

20. Compliance report should be submitted through the IPOs. Biswan within a month positively.

Sd/- V.N. Kapoor
Supdt. of Post Offices
Sitapur Division.
261001

Siddiqi/-

No IR/Behta Pakauri/SP/78 Dated Sitapur the 2.1.1979
Regd.

Copy to:-1. The BPM Behta Pakauri (Tambaur)
Sitapur.

2. O/C.
3. IPOs Biswan (Sitapur).
4. Spare.

TRUE COPY

(Signature)



Handwritten signature and date 25/12/79.

इन दि आनरेबल हाई कोर्ट आफ जूडीकेचर ऐट इलाहाबाद,
लखनउ बेन्च, लखनउ ।

रिट पिटीशन नं० 192 आफ 1983
सुरेश चन्द्र श्रीवास्तव -- -- पिटीशनर
वर्सेस
यूनिशन आफ इण्डिया अदर्स -- -- अपोपार्टीज़

अनेजर नम्बर -4

आई आर बेहटापकौड़ी / 79
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आज दि० 29-12-79 को बेहटा पकौड़ी एस०ओ० बिस्वा
ए०ओ० तम्बौर हे निरीक्षक किया । पिछला निरीक्षण दि० 28-12-
75 को अधीक्षक महोदय ने किया था। श्री सुरेश चन्द्र श्रीवास्तव जिनकी
आय कृषि एवं अध्यापन से 1700/- होगी बी०पी०एम० है। डाक का
आदान प्रदान ई०डी०आर० रिहार द्वारा होता है। डाक आने का
समय 14- जाने का 11-30 व वितरण 14-15 पर है। स्थानीय
वितरण बी०पी०एम० स्वयं करते हैं ।

2- नकद धन तथा डाक टिकट आदि को जाँच को तथा ठीक
पाया ।

3- डाक टिकटों में रसीदी टिकट नहीं है। इनकी आपूर्ति
पर ध्यान देकर मुँगाये । कैश की सीमा 200/-नकरखा जाय ।

4- स्वीकृत धन का अधिशेष परिवर्तित किया जाय ।

मिस 200/- मेस 30/- एन/एस 5/-

पी०एस० 100/- रेव 20/-

डी०ओ० कृपया मेमो भेजें ।

5- आदेश पुस्तिका पर अनुपालन रिपोर्ट लिखे तथा इसे



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भेजे ।

6- लेटर बाक्स 3 स्थानीय हैं जिनको बी०पी०एम० स्वयं खोलते हैं ।

7- डाक घर में पी०सी० व्यवस्था है। वितरण कार्य के लिये आस पास के कुछ गाँव लगाकर ईडी०सी० से दिया जा सकता है तथा इसे ई जी एस०ओ० किया जा सकता है ।

जालिमपुर	सिकरोहर खुर्द	सुमली	छरेहटा
दसिया	सिकरोहर कला	सोहटैया	सूर्यपारा
महमदपुर	मिठिया	चाँदी खेरा	पहावपुरवा

इसका प्रस्ताव "ए" बी०आर० परि कार्या को भेजे ।

8- बी ओ० स्लिप, ए/सी तथा जरनल की जाँच का निम्न परिणाम रहा ।

ए- 9-11-79 को स्लिप का शोधन 136-75 के स्थान पर 131-25 है । ऐसा कई दिनों से है। एक क्री० एस०बी० खाते में 10/- जमा है जिसे 5/- हिसाब में ए०ओ० द्वारा लिया गया। बी०पी०एम० 5/- को पॉजिट स्लिप भेजे जिसे हिसाब में लेकर शोधन सुधारा जाय ।

बी- 17-10-79 को दो आर०टी० आई है परन्तु केवल एक रसीद है दूसरी रसीद खोज कर लगाये ।

सी- 15-6-79 को आज्ञात पासबुकों के वितरण की तिथि लिखी जाय । रसीदे स्लिप के साथ रहें ।

डी- 19-4-79 को कैशा बैग का वजन स्वीकृत नहीं है । बी०पी०एम० इसे न भूले ।

ई- बी०सी० जरनल पर वस्तु के सामने वितरण की तिथि तथा न बटने का कारण लिखा जाय ।

9- पी०सी०ओ० रसीद 8 दि० 10-9-79 जारी तथा शोध

सादी है। इसे फटने से बचाने के लिए संभाल कर रखें।

10- मोहर छाप किताब पर निशान स्पष्ट लगाये जायें। सील के टाइप कम हैं। इनकी पूर्ति ओ/एस करें।

11- ब्रिटि पुस्तक पर एम0ओ0 रसीद न आने, शोधन के अन्तर की बात लिखी जाय।

12- अर्धवार्षिक वार्षिक पत्र गणना का अभिलेख ठोक से रखा जाय।

13- बी आर0 पी0 10 दि0 28-12-78 से 99 दि0 27-12-79 तक प्रयुक्त तथा 100 सादी है। ए0ओ0 प्रमाणित करें और नयी रसीद बुक भेजें।

बी- बी0ओ0आर0 96 से 99 तक करें एम0ओ0 रसीद ए0ओ0 शीट भेजें।

14- एस0बी0पी0आर0 20 दि0 1-1-79 से 50 दि0 16-11-79 तथा दि0 29-12-79 जारी तथा 7 से 50 तक सादी है। ए0ओ0 प्रमाणित करें।

बी- पी0आर0 के पीछे जमाकर्ता के अंगूठे को प्रमाणित करा लिया जाया करें।

15- पासबुक की रसीद किताब पर जमाकर्ता से प्राप्त रसीदों को संलग्न कर लिया जाया करें। ओ/एस इसे देखें।

16- स्टॉक बुक देखें। अंतिम बीजक सी/ 78-79 रिकार्ड पर है।

की- निम्न सामान की आवश्यकता है।

मेज- कुर्सी - स्टूल - दू कृपया भेजें।

17- एस/बी एस/ एस किताब देखी। हस्ताक्षर मोहर से इस प्रकार काटे व प्रमाणित करें कि किताब व हस्ताक्षर दोनों पर छाप आये। इस पर विशेष ध्यान दें।

18- निम्न पास बुकों के शेष धन की जाँच की तथा 40 शेष धन प्रमाणित करें ।

856261	28-12-79	664-60
856237	,,	211-10
856716	27-12-79	100-72
855266	,,	304-60
855270	26-12-79	879-48
856808	,,	3300-
856822	,,	2680 -
856660	22-12-79	911-95
855956	19-12-79	5-60
855201	,,	60-50

19- परिपालन रिपोर्ट 15 दिन में भेजी जाय ।

दिनांक 29-12-79

ह0-अपठनीय

सीतापुर



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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH, LUCKNOW

Registration No. T.A. 1109/87(T)
(Writ Petition No. 192/83)

Suresh Chandra Srivastava

..Petitioner

verses

Union of India & others

..Respondents.

Hon. Mr. Justice K. Nath, V.C.
Hon. Mr. K. Ojaya, A.M.

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

Writ Petition No. 192/83 "S.C. Srivastava vs. Union of India & others" of the High Court of Judicature Allahabad, Lucknow Bench, Lucknow is before this Tribunal under section 29 of the Administrative Tribunals Act, 1985 for quashing the order dated 30.10.82 (Annexure -1) whereby the applicant was put off duty with effect from that date.

2. There was a Branch Post office at Behta Pakauri District Sitapur where the petitioner Suresh Chandra Srivastava was appointed on 11.1.1971 as Extra Departmental Branch Post Master. He claimed to have continued to work till 30.10.1982 when he was put off duty by the impugned order.

3. The grievance of the applicant is that the impugned order is invalid because no departmental enquiry was pending against him which is a condition precedent to the passing of a put off order under Rule 9 of Extra

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Departmental Agents (Conducts and Service) Rules, 1964
(for short 'the Rules').

4. The case of the respondents is that while the petitioner was working as E.D.B.P.M., the Branch post office was upgraded on 22.2.80 to be sub post office, whose working hours were from 11 A.M. to 4 PM. It was said that the petitioner was not only working as E.D.S.P.M. but was also working as a primary school teacher in the same area, with the result that the duty hours of teacher conflicted with the duty hours of post office. It was alleged that a complaint had been lodged against the petitioner's failure to perform duty regularly in respect of which a preliminary enquiry was conducted and it was found that the work of the post office, especially, the telephone remained unattended as the post office and the primary school were functioning at two different places. It was next said that the applicant was asked to resign from one of the posts but he did not even reply. ^h~~so~~ It is under these circumstances that the petitioner was put off duty by the impugned order.

5. The aforesaid facts, as stated in the counter are not denied. ^h~~but there~~, ^h~~In~~ para 4 of the rejoinder, the statement in para 3 of the counter is admitted; that the working hours of the upgraded sub post office were from 11 AM to 4 PM, and in para 5 of the rejoinder there was no specific denial of the statement in para 4 of the counter that ^h~~while~~ working hours of the post office and the school where the petitioner was the teacher clashed with each other on account of which the work of the post office remained unattended. Of course, it was stated in a general way that the contents of para 4 were denied. Similarly, there was no denial of

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the statement in para 5 of the counter that the petitioner was asked to resign from one of the posts by letter dated 2.3.80 but he did not reply. The statement in para 5 of the rejoinder is that the respondents have no legal sanction to require the applicant^{to} resign.

6. It was also urged by the learned counsel for the respondents that the petitioner didnot avail of the remedy of^{appeal} provided under rule 10 of the Rules and therefore, the petition was premature. This Writ Petition was filed in the HighCourt on 21.1.1983.

7. We have heard the learned counsel for the parties and we notice that on the face of it, the impugned order of putting off the applicant was not in accordance with the provisions of rule 9(1) of the Rules which runs as follows:

"Pending an enquiry into any complaint or allegation of misconduct against an employee, the appointing authority or an authority to which the appointing authority is subordinate may put him off duty;"

8. It is clear enough that the power to put off duty of an EDBPM could be exercised only when an enquiry was pending. The learned counsel for the respondents admitted that the enquiry in which it was found that the applicant/petitioner was not attending to the post office because he was holding two jobs at the same time, was only a preliminary enquiry, and that no charge sheet was ever framed or served upon the applicant. The impugned order, therefore, is invalid and cannot be sustained.

9. Nevertheless, the question is whether having regard to the particular facts and circumstances of the case, the petitioner should be given any relief. In the first place, it is clear that Rule 10 provided for an appeal against an

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putting off order for which Rule 11 prescribed a limitation of three months. Perhaps the petitioner could have had his remedy from the competent appellate authority if he had filed the appeal departmentally instead of filing the Writ Petition. The learned counsel for the petitioner says that the mere availability of an alternative remedy is no bar to filing of the writ petition. He has referred to the case of Anoop Kumar vs. Meerut Development Authority (1985, Allahabad Law Journal 1107). There can be no quarrel with that proposition. At the same time, there can be no doubt that it is not a matter of right to the petitioner to file writ petition without availing of alternative remedy. Between 1982 and 1990, 8 years have elapsed and it would indeed be harsh to relegate the applicant to the alternative remedy of appeal; that is ^{however a} factor which must be borne in mind by this Tribunal, while considering what relief may be given. The recognised principle is that a person cannot get benefit of his own laches.

10. It is also true that if the department wanted to act upon the complaint and preliminary enquiry report, they should have given an opportunity to the applicant to show cause in a properly constituted disciplinary enquiry, but in the midst of these legal situations the admitted fact is that the applicant was not in a position to discharge his duties as a E.D.S.P.M. because ^{of} his working also as a primary school teacher. It is not stated by the applicant in his petition or in rejoinder that he did actually discharged the duties of EDSPM in addition to his working as a Primary School teacher. Once it is admitted that the working hours of the school and the post office were concurrent, it was just not possible for the petitioner to discharge his

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duties with the post office. Indeed in para 10 of the rejoinder the petitioner said that he never absented himself from duty and instead proceeded on leave and made arrangements of his substitute under paragraph 572 A (B) of P&T Manual, Volume IV. In para 11 it was stated that the work of the post office was being regularly done by Smt. SurajKumari to the knowledge of the respondents and that the lady had been recognised as such by implication^{by} the opposite parties. In para 10 of the counter, it was specifically stated that the petitioner had absented himself from duty with effect from 22.11.82, that no leave was ever sanctioned by the appointing authority, nor any substitute was approved by the competent authority. It was further stated that Smt. Suraj Kumari is the own wife of the petitioner and her engagement was absolutely improper and illegal. The fact of Smt. Suraj Kumari being the petitioner's wife, is not disputed.

11. On^a careful considerationⁿ of the features and circumstances of the case we are of the opinion that while the impugned order of putting off the applicant may be quashed as ultra vires, the petitioner should not get any consequential relief. Indeed the petitioner has not set out any specific consequential relief in the petition.

12. In the result, the impugned put off duty order (Annexure -1) dated 30.10.82 is quashed, but no further relief in any respect is awarded by this Tribunal to the petitioner. The parties shall bear their own costs.


ADM. MEMBER.


VICE CHAIRMAN.

Dated the 8th May, 1990.