

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE TA 1170/87 of 19

Name of the parties Bal Krishna Awasthi

.....Applicant.

Versus.

Union of India and ors. Respondents

Part A

Description of documents

1 - Index sheet	-	A1
2 - Index sheet	-	A2 to A7.
3 - Judgment dt. 29-1-92 disposal of	-	A8 to A10.
4 - High Court, Lucknow writ petition Bans / Sri B. Selvaraj & ors. vs. State	-	A11 to A48
5 - Current Affidavit	-	A49 to A71
6 - Rejoinder Affidavit	-	A72 to A78.

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 : 29-7-11

Countersigned

Section officer/Court officer.

Signature of the
Dealing Assistant.

Annexure - A
CAT- 82

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

A/
1

INDEX - SHEET

T.A. NO. 1170/1997 (W.P. NO. 3742/1983)

CAUSE TITLE

~~Reg. No. 1684 OF 1987~~

Name of the Parties

Bal Krishan Awasthi

Versus

Union of India & others

Part A, B and C

Sl. No.	DESCRIPTION OF DOCUMENTS	PAGE
	Index sheet	A1
	order sheet s.	A2 - A7
	Judgment Dt. 29.01.92 } Disposed of }	A8 - A10
	High Court Lucknow, writ-Petition- Power/ Sri B. Solomon Advocate H.C. order sheet	A11 - A48
	Tribunal counter Affidavit } behalf opp. parties. Dt. 11.4.89 }	A49 - A71
	Rejoinder Affidavit -	A72 - A78
	<u>B. file</u>	
	writ-Petition / e.A / RA -	B79 - B-142
	<u>C. file</u>	
	Misc. papers	e-1 - e-6

Chandra Prasad

07.02.1992

A2

Order Sheet

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 ADDITIONAL BENCH ALLAHABAD

TA No. 1170/87 of 198

5

VS

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	Office report 2	3
	<p>In application has been filed in this Tribunal for transferring the case No. 1170 of 87 to the Circuit Bench, Lucknow. If approved, 23-20 May 1988 may kindly be fixed for hearing at Circuit Bench Lucknow. In this regard the notices may be sent to the parties concerned.</p> <p><u>DR (5)</u> 5/5/88</p> <p>List this case before DR(5) on 23-20 May 1988 at Circuit Bench Lucknow for appearance.</p> <p><u>DR (5)</u></p> <p><u>DR (5)</u></p> <p>on the request of counsel for counsel for applicant this case on 21-7-88.</p> <p><u>Registrar</u></p> <p>21-07-88</p> <p>None report. Issue notice to the respondents alongwith a copy of the petition directing them to file reply by 20/9/88.</p> <p><u>DR (5)</u></p> <p><u>Registrar</u></p>	

Date	Note of progress of proceedings and routine orders	Date to which case is adjourned
1	2	3
<p>20.9.00</p>	<p><u>D.R</u></p> <p>On the request of applicant's counsel, the case is adjourned to 25.10.00 for reply.</p> <p><u>D.R</u></p>	
<p>22/11</p>	<p>CA 25.10.00</p> <p>Counter has not been filed as yet. Let counter may be filed by 21.11.00.</p> <p><u>D.R</u></p>	
<p>21.11.00</p>	<p>No sitting. Adjourned 19.12.00 for filing reply. at the request of</p> <p><u>h</u> 21/11</p>	
<p>19/12/00</p>	<p>No sitting. Adjourned to 22.12.00.</p> <p><u>h</u> 19/12</p>	
<p>22/12</p>	<p>No sitting. Adjourned to 23/1/01</p> <p><u>h</u> 22/12</p>	
<p>23/1/01</p>	<p><u>O.R</u></p> <p>Counsel for applicant is present. The case is fixed for final hearing on 23.2.01. In the meantime C.A & R.A can be filed.</p> <p><u>O.R</u></p> <p>No reply filed.</p> <p><u>h</u> 16/1</p>	

T.A. 11-70 / 87 (T)

Ab

11-12-70

No sitting Adj. to 26.2.90.
Counsel for repdts. is present.

on
S.F. hearing
L
23/12

L
11/12

(9)

26.2.90

Att. Justice K. Nallu. VC
Att. Mr. K. J. Ramani AM

Application for adjournment -
received from M. Dabey Adv. Counsel
for the appl. side. The case is adjourned
to 19.4.90 for hearing.

L

LSM
AM

Q
VC

19.4.90.

Lawyers on strike.

Case is adj. to 24.9.90

B.O.C.

24.9.90

No sitting Adj. to 29.11.90

29.11.90

No sitting Adj. to 14.12.90.

Q

14.12.90

case not reached Adj. to 23.1.91.

Q

B.O.C.

23.1.91

No sitting Adj. to 20.3.91

Q

20.3.91

No sitting Adj. to 4.4.91

Q

CA/RA have been
exchanged
S.F.H.

L
11/12

11/30/1924

A7

4/4/91

(10)

Hon. Mr. A.B. Gosthi, Am.
Hon. Mr. S.N. Prasad, Jm.

None is present for the parties.
However, there is an application
from the applicant's counsel
seeking an adjournment. Sri U.C. Sinha
appearing on behalf of respondents ^{also} makes
a request for adjournment. List the
case for final hearing on 9/5/91.

Jm.

Am.

2

9/5/91

Hon. Mr. Justice U.C. Srivastava, v.c.
Hon. Mr. A.B. Gosthi, Am.

List this case for final
hearing on 29/8/91.

Am.

v.c.

2

29.8.91

No sitting adjn 24.9.91
J

24.9.91

No sitting adjn 7.11.91
J

7.11.91

Hon. Justice U.C. Srivastava - v.c.
Hon. Mr. A.B. Gosthi - Am

None present for the parties adjourned
to 29.1.92.

Am

v.c.

Received
To A.C. M
80/3/92

2

TA. 1120/87

23/2/89.

Hon. D.S. Misra, Am. (7)
Hon. G.S. Sharma, Jm.Shri M. Dubey for the petitioners
is present.Shri V.K. Choudhary for the
respondents requests for time
to file reply. The reply
may be filed within four
weeks. Replies, if any, may
be filed within two weeks
thereafter. List this case
for final hearing on 13-4-89.

Jm.

Am.

DecORTime granted for
filing reply has expired
but no reply has so far
been filed by the re-
spondents.

Submitted for orders.

Act
11/4

Hon' Mr. Ajay Johri, A.M.

Hon' Mr. D.K. Agrawal, J.M.

13/3/89

Due to Lawyers strike at Lucknow today,
the case is adjourned to 24-4-89 for orders.

J.M.

(sns)

A.M.

ORNo reply has so far
been filed by respond-
ents.

Submitted for orders.

ORReply has been filed
on behalf of respondents
on 11-4-89.

Submitted for orders.

Act
11/4

AS

7-A 1170/07 (T)

8

Hon' Mr. D.S. Misra, A.M.

Hon' Mr. D.K. Agrawal, J.M.

24/4/89

None is present for the applicant.

Counter on behalf of the opposite parties has been filed and a copy of the same has been sent by Registered post to the applicant.

List this case for final hearing on 2-6-89.

In the meantime the applicant may file rejoinder, if any.

De

J.M.

De

A.M.

(sns)

OR

The learned counsel for the applicant has been filed rejoinder duly served on the opposite parties.

h
25/6

2.6.89

No Sitting. Adjourned to 30.6.89 for Hearing.

A BOC

OR

Counter & Rejoinder has been filed. Case is ready for hearing. Submitted for hearing.

h
29/6

30.6.89

Hon. Mr. K. J. Raman, AM
Hon. Mr. D.K. Agrawal, JM

On the request of the learned Counsel for both the parties, Case is adjourned to 1.9.89 for final hearing.

OK agr

J.M.

WDR
AM

OR

Case is submitted for hearing.

h
31/7

1/9/89

Hon. Justice K. Nark, VC.

On the application of the opposite parties counsel Sri K. C. Sinker, list for final hearing on 27-10-89.

De

VC

103

27.10.89

No Sitting of D/A. Adj. to 17.12.89. Both the Counsel are present.

cc

Bal Kishore Mishra
U.S.
C-01

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

FORM OF INDEX

~~Q.A./T.A./R.A./C.C.P./~~ No. 1174/87/19

PART - I

- | | | | |
|----|------------------|----|----------|
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| 2. | Order Sheet | :- | 3 to 10 |
| 3. | Any other orders | :- | NIL |
| 4. | Judgement | :- | 11 to 13 |
| 5. | S.L.P. | :- | NIL |

29/3/98
DY. Registrar

Supervising Officer

30/1/98
Dealing Clerk

Note :- If any original document is on record - Details.

NIL

30/1/98
Dealing Clerk

V.K. Mishra

CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH LUCKNOW.

...

Registration T.A. No. 1170 of 1987
(W.P. No. 3742 of 1983)

Bal Krishna Awasthi Petitioner/
Applicant.

Versus

Union of India
and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as 'Extra Departmental Branch Post Master' Bauna Bhari, District Sitapur dated 20.2.1969. On 5.10.1971, he handed over his charge to one Mishri Lal on his own responsibility to perform duties. The applicant felt an apprehension on 21.10.1971 that he was being maliciously involved in a murder case. He went to make an enquiry on 22.10.1981 in the court whether he was arrested and sent to jail, and he was bailed out only after 13 months, and finally on appeal he was acquitted by the High Court, Allahabad on 10.7.1975. The applicant, thereafter wanted to resume the duty but instead of allowing him to resume the duty, a charge sheet was given to him on 3.1.1980, and the charge against the applicant was that he did not submit any application for leave after 31.10.1971 and the other charge was that he did not furnish any information on 22.10.1971 before his surrender to the court. An enquiry officer was appointed and the enquiry officer concluded his enquiry. The enquiry officer held that both the charges were partly proved and he submitted his finding to the disciplinary authority. The disciplinary


authority, it appears, disagree with the findings of the enquiry officer and held that both the charges were proved and an order of removal from service was passed. The applicant filed an appeal which was dismissed thereafter, he approached to the Tribunal. On behalf of the applicant, it has been contended that when the disciplinary authority did not agree with the findings of the enquiry officer, according to whose recommendation, the applicant was to get a minor charge-sheet and was not to be thrown out from service, an opportunity of hearing should have been given to him but the same was not done and no show cause notice was given to the applicant as to why charges should not be held to be proved in entirety. In this connection, a reference has been made to the case of Narainji Mishra Vs. State of Orissa, 1969, SLR page, 257, in which it was held that notwithstanding the deletion of Art.311(2) of the Constitution of India, in case the disciplinary authority defers from the finding of the enquiry officer, the principle of natural justice will be applicable on the disciplinary authority to give an opportunity of hearing to the delinquent employee to show ^ucase as to why the charges may not be held to be proved upon him, but that was not done.

2. In these circumstances, this application deserves to be allowed and both the orders are quashed. However, it will open for the disciplinary authority to give a show cause notice to the applicant and thereafter to go

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ahead with the enquiry. However, it is clear that he has not done any work during this period, he will not be entitled to any back wages up to the stage. The application is disposed of with the above directions. Parties to bear their own costs.


Member (A)


Vice-Chairman

Dated: 29.1.1992

(n.u.)

GENERAL INDEX

CIVIL

SIDE

CRIMINAL

Chapter XLI, Rules 2, 9 and 15

3

M1

Nature and number of case W.P. 3742 - 83

Name of parties Bal Krishna Awasthi vs. Union of India

Date of institution 20-7-83

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			
1	2	3	4	5	6	7	8	9
					Rs. P.			
	1-	W.P. with Amicus and affidavit	33-	-	102-00-			
	2-	Power.	1-	-	5-00			
	3-	order sheet	1-	-	-			
	4-	Bund Copy	1-	-	-			

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 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

Writ A-107a2 S. No. 0
In the Hon'ble High Court of Judicature At Allahabad ,
(Lucknow Bench) , Lucknow . *Ar*
W.P. No. *3742* of 1983 .

Bal Krishna Awasthi Petitioner

Versus

Union of India and Others ; Opp. Parties

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6.	" " 5	19 & 20
7.	" " 6	21 to 25
8.	" " 7	26 & 27
9.	" " 8	28
10.	" " 9	29 to 31
11	Affidavit in support of the petition. 32 & 33	
12.	Vakalatnama .	

11020
Dated - 20.7.83

B. Coleman
Counsel *Ar*

For Petitioner .

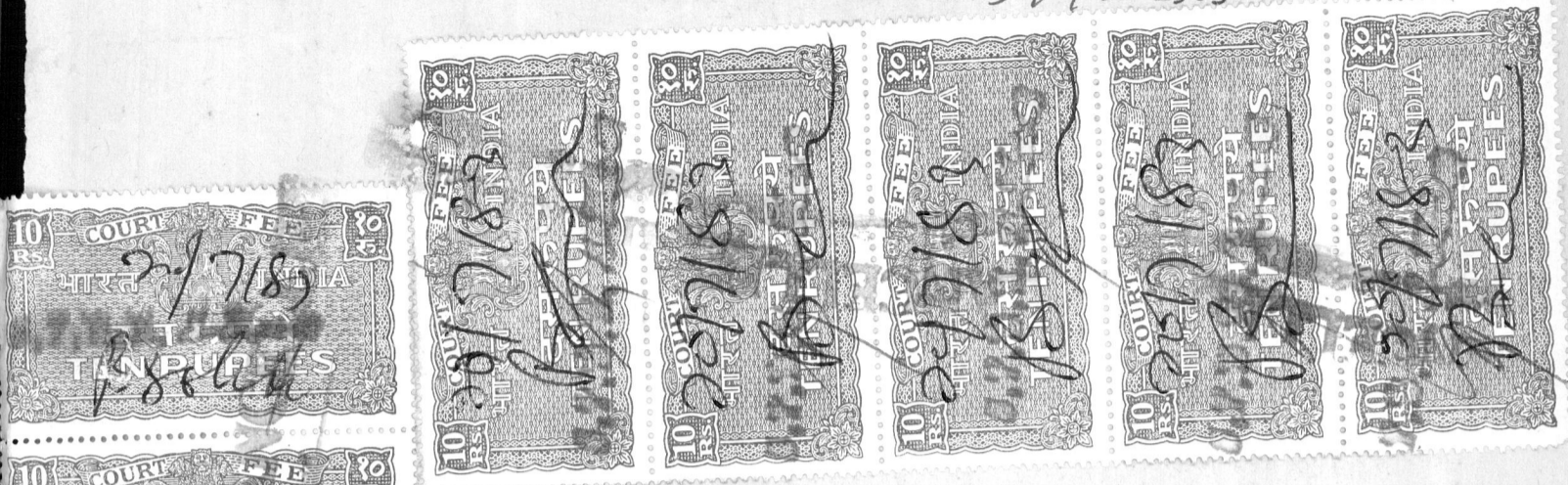
6

AB

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

(Lucknow Bench) Lucknow

W.P. No. 3 of 1983



Bal Krishna Awasthi aged about
42 years S/O Kashi Ram , R/o
Bauna Bhari , P.O. Bauna Bhari
P.S. Sidhauri , Distt Sitapur .

100/- fine
20/7

- - Petitioner

Versus

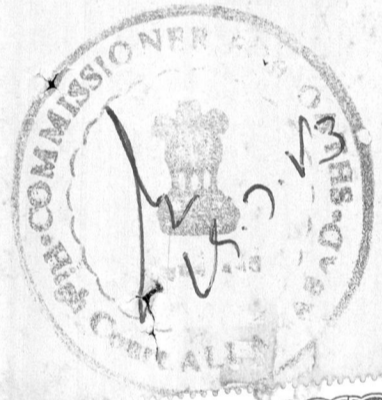
1. Union of India through the
Secretary Ministry of communica-
tions , Govt of India, New Delhi. *
2. Director ,Postal Services (Central)
Lucknow Region , Lucknow .
3. Supdt of Post offices Sitapur Dn.
Sitapur .

- - Opp. Parties .

Writ Petition under Article 226 of the Constitution
of India .

The above named petitioner most respectfully states
as under ; -

1. That the petitioner was appointed as Extra Depart-
mental Branch Post Master Bouna Bhari , Distt Sitapur
by the O.P. No. 3 under his memo no A - 92 dated
20.2.1969 and the petitioner discharged his duty as

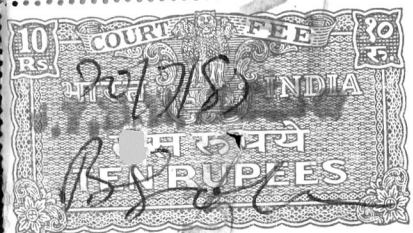


बाल कृष्ण अवस्थी

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

(Lucknow Bench) Lucknow

W.P. No. 3 of 1983



Bal Krishna Awasthi aged about

42 years S/O Kashi Ram , R/o

Bauna Bhari , P.O. Bauna Bhari

P.S. Sidhauri , Distt Sitapur .

100/- A-100/-
207

- - - Petitioner

Versus

1. Union of India through the
Secretary Ministry of communica-
tions , Govt of India, New Delhi. x

2. Director ,Postal Services (Central)
Lucknow Region , Lucknow .

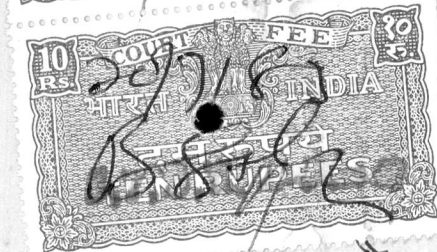
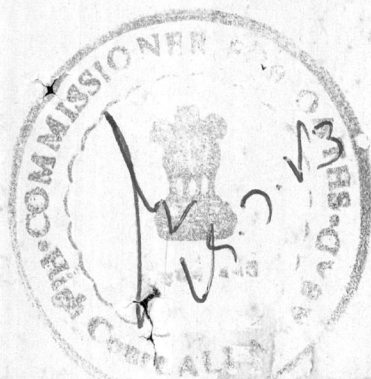
3. Supdt of Post offices Sitapur Dn.
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- - - Opp. Parties .

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20.2.1969 and the petitioner discharged his duty as



बाल कृष्ण अवस्थी

Extra Departmental Branch Post Master Bauna Bhari satisfactorily and without any complaint from any quarter what so ever . A true copy of order dated 20.2.69 is Annexure No 1 [✓] in this petition .

2. That the petitioner fell ill on 5.10.1971 and applied for leave engaging one Shri Misri Lal on his (petitioner's) own responsibility to perform duties . The petitioner submitted three applications dt the 5.10.1971 , 8.10.1971 and 21.10.1971 for leave from 5.10.71 to 7.10.71 , 8.10.71 to 20.10.71 and 21.10.71 to 31.10.71 respectively . The petitioner felt an apprehension on 21.10.71 that he was being maliciously involved in a murder case . He went to the court at Sitapur to make enquiry and know the truth on 22.10.1981 when he was sent to jail .

3. That the petitioner was granted bail after about 13 months and finally on appeal he was acquitted by the Hon'ble High Court Allahabad by its order dated the 10.7.1975 . A true copy of the operative part of the order is Annexure No . 2

4. That after having been acquitted by the Hon'ble High Court Allahabad and released from jail , the petitioner approached the O.P.No. 3 , to deliver the charge of Extra Departmental Branch Post Master ship Bauna Bhari . The O.P.No. 3 , instead of allowing the petitioner to resume charge as Extra Departmental Branch Post Master Bauna Bhari issued a charge sheet to the petitioner under his memo dt the 3.1.1980 . A true copy of the Charge sheet is Annexure No. 3

5. That during the enquiry the charges levelled against the petitioner could not be substantiated



बालकृष्ण शर्मा

2

29.1.92

Hon. Mr. Justice U.C. Srivastava, Jc.
Hon. Mr. A.B. Goshal, A.M.

None for the applicant.
The case is dismissed
for want of prosecution
without any order
as to costs.

AC.

2

Vc.

mw

and yet the Inquiry Officer by his report dated 16.3.81, maliciously opined that the charge No. 1 was proved to the extent that the petitioner did not submit any application for leave after 31.10.71 and the charge no 2 was proved to the extent that the petitioner did not furnish any information on 22.10.71 before his surrender to the court. A true copy of his report is Annexure 4 to the writ petition.

6. That the petitioner had already submitted leave applications dt the 5.10.71, 8.10.71 and 21.10.71 for leave upto 31.10.71 and had made over the charge of the Extra Departmental Branch Post Master ship Bauna bhari to one Shri Misri lal on his responsibility under the rules. Mean while under apprehensions that the petitioner had been involved in a murder case, he went to the court to find out the truth on 22.10.71 and from the court he was sent to the jail. He was released on bail after 13 months and finally acquitted by the Hon'ble High Court by the order dt the 10.7.1975. In the circumstances there was no reason or occasion to apply for leave after 31.10.71 and to inform the department about the petitioner having been sent to the Jail, when the agent of the petitioner was already working as Extra Departmental Branch Post Master Baunabhari on petitioner's risk and responsibility and the fact was well known through him to the officers of the department.

7. That the charges as framed by the O.P.No 3 were not substantiated and proved. Even the Inquiry officer did not come to the conclusion that the charges were proved. His finding indicates that the charge could be established only to some extent.



बाल कृष्ण अग्रवाल

still the O.P.No. 3 without ~~applying~~ applying his mind judiciously to the facts and circumstances of the case and the evidence adduced and produced during the Inquiry and the report submitted by the Inquiry and the report submitted by the Inquiry Officer, arbitrarily held that he found the charges levelled against the petitioner to be proved. This is evident by the fact that he has mentioned in his order that he fully agreed with the findings of the Inquiry officer and yet he has stated that the charges are fully established. On his erroneous findings O.P.No. 3 passed orders terminating the services of the petitioner from the post of Extra Departmental Branch Post Master Bayhabhari from 1.11.71, the date from which, according to him, the petitioner was absent without information. A copy of this order is Annexure 5. It is incorrect to state that the petitioner was absent without information. The petitioner had ~~given~~ given charge to his substitute under the rule and he was aware that the petitioner had been sent to jail suddenly. The petitioner had sent message to the said substitute while going to jail.

8. That the petitioner submitted an appeal to the Regional Director, Postal Services, Lucknow Region Lucknow, O.P. No 2 against the order passed by the O.P.No. 3, on the 22.6.1981 pointing out that the learned Supdt of Post Offices Sitapur had not done justice in terminating the services of the petitioner, that none of the two charges were proved and the question of taking leave beyond 31.10.71 did not arise when the petitioner had already been sent to jail and that the rule of absence from duty exceeding 180 days applies only when the incumbent does so voluntarily of his own accord and not in abnormal



आमंत्रित नहीं

circumstances beyond control in which the petitioner was placed having been imprisoned . The petitioner was liable to be put off from duty on account of his having been imprisoned and dealt with accordingly . A true copy of the appeal is annexed as Annexure no. 6 .

9. That the O.P.No 2 kept the appeal pending for a pretty long time . The petitioner attended the office of O.P.No.3 a number of times and enquired about the fate of his appeal and requested the O.P.No. 3 to give a copy of the order on his appeal. The O.P.No. 3 got annoyed and told the petitioner to have the order from the Director Postal Services , O.P.No. 2 , to whom the appeal was addressed .

10. That the petitioner , thereafter , addressed a letter to the O.P. No. 2 on 10.2.1983 to communicate his decision by 14.2.1983, or else the petitioner would attend his office on the 14.2.1983 , when his decision be given personally . A copy of this letter dt 10.2.1983 is Annexure No.7 .

11. That the petitioner attended the office of O.P.No.2 on the 14.2.83 and met the section Supervisor there. The O.P. No. 2 was not available in his office . The Section Supervisor called the petitioner the next day, but when the petitioner attended his office repeatedly as directed , he did not give the order and finally said that a decision had been taken and the copy of the order would be received through the S.Pos Sitapur, O.P.No. 3 .

12. That the petitioner addressed a representation dt the 19.3.1983 to the O.P.No. 3 requesting him to communicate the orders passed on his appeal to his house address. A copy of this representation is Annexure No 8 . There upon , the petitioner was furnished

आलखुआ अवस्था

a copy of endst no R.D.L./ E D A /A-14/81/2 dt 11/16.11 81 through the Postal Overseer on 5.4.1983 , purport - ing to be the appellate order . A copy of this order is Annexure No. 9 .

13. That the appellate authority O.P. No 2 has wrongly and erroneously opined that the petitioner had sub - mitted an application dated 30.10.1971 for leave from 1.11.1971 to 15.11.71 supressing the fact when he (petitioner) was already aware before 30.10.1971 of his involvement in a murder case . This is contrary to the findings of the Inquiry officer who has held that application Ex ~~2~~ 4 for 1.11.71 to 15.11.71 could not be proved and the petitioner had not sub - mitted any application for leave after 31.10.81 . It is also against the verdict of the disciplinary authority O.P.No. 3 who held that the petitioner was absent from duty from 1.11.71 without any information .

14. That the O.P.No. 2 has erroneously held that the petitioner should have sent information from the jail or through his ~~pa~~irokars who were doing pairawi in his case and aranging for Bail etc . He has maliciously not taken in to consideration that the petitioner before proceeding on leave had handed over the charge to his nominee Shri Misrilal at his own risk and responsibility as required under the rule . Shri Misri lal was the substitute of the petitioner to act as Extra Departmental Branch Post Master and the fact of the petitioner having been sent to the jail was duly communicated and was not a secret to the inspecting officers of the Deparmental who were inspecting the office regularly.

बातकुरा मारु

15. That the O.P.No 2 has wrongly held that the petitioner was unauthorisedly absent from duty for

over ~~the~~ 180 days . The petitioner had given a substitute in his place before his proceeding on leave w.e.f. 5.10.71 and his remaining in jail w.e.f. 22.10.71 cannot be construed as unauthorised absence . This was under the circumstances beyond control of the petitioner as he was maliciously involved in a murder case .

16. That the disciplinary authority and the appellate authority both have acted malafide ; against the fact and evidence on record and contrary to the provision of law and with a view to perpetuate the new incumbent appointed by O.P. No. 3 as Extra Departmental Branch Post Master Bouna Bhari .

17. That the petitioner was involved in the murder case maliciously and after his having been acquitted by the Hon'ble High Court has a right to be reinstated on his post as Extra Departmental Branch Post Master Bounabhari Distt Sitapur , which has illegally and arbitrarily been held up by O.P.No. 2 and 3 . He is also entitled to all the pay and allowances for the period he was kept out of employment for no fault on his part .

18. That the petitioner was neither reinstated on his post as Extra Departmental Branch Post Master Baunabhari nor put off duty , amounting to suspension of his lien and the disciplinary action ~~initiated~~ initiated against him and the ~~orders~~ orders passed in this regard are perverse contrary to law and hence null and void .

19. That the petitioner having failed to seek justice from the P & T Department and having no other efficacious remedy files this writ amongst others on the following grounds .

आलेखनीय नमस्ते

Grounds

- (a) Because the entire disciplinary ^{proceedings} taken against the petitioner are null and void.
- (b) Because an erroneous view has been taken both by O.P. No. 2 and 3 against the fact on record and evidence adduced before the Inquiry .
- (c) Because the Inquiry officer has acted illegally and beyond his power and his findings have not been questioned by the O.P.No. 2 and 3 .
- (d) Because the allegations as made against the petitioner have not been established and proved .
- (e) Because the O.P.No 2 has acted maliciously and illegally in holding that the charges have been proved in as much as he has agreed to the findings of the I.O. who has opined that the charges are proved to certain extent only .
- (f) Because the O.P.No 2 has wrongly held that the petitioner had submitted application for leave beyond 31.10.71 , which is contrary to the fact on record .
- (g) Because the petitioner had given substitute in his place before proceeding on leave as required under the Rule and the question of absence from duty did not arise .
- (h) Because there was no hindrance or dislocation in Govt work .
- (i) Because the petitioner was involved maliciously in a murder case and sent to jail in the circumstances beyond his control , and there was no lapse on his part .
- (j) Because the O.P.No. 2 did not communicate the result of finding to the petitioner immediately .



122

(k) Because there has been illegality in the proceedings by the O.P. No. 2 and 3 .

(1) Because the alleged absence from duty by the petitioner was not of his own volition and the rules of absence do not apply to such a case .

Prayer

It is, therefore, most respectfully prayed that this Hon'ble High Court may be pleased :-

To issue a writ, order or direction in the nature of certiorari quashing the orders dtw. 5.8.81 contained in Annexures 5 and 9 to the writ petition and to issue a writ of Mandamus to O.Ps No 2 and 3 for treating the petitioner in service and on duty through out and to pay him the pay and allowances as due from time to time and to pass such other writ order or direction as this Hon'ble High Court may deem fit in the circumstances of the case and to allow this writ petition with cost .

Ludhiana
Date 20.7.83

B. S. Chhina
Counsel
For Petitioner

A23 10

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

(Lucknow Bench) , Lucknow .

W.P. No. of 1983 .

Bal Krishna Awasthi aged about 42 years

S/O Kashi Ram, R/O Bauna Bhari, P.O. Bauna

Bhari P.S. Sidhauri, Distt. Sitapur. - - Petitioner .

Versus


Union of India and others - - Opp. Parties .

Annexure 1

From Nirikshak Dak Vibhag

Sitapur Uttar Up Prakhanda , Sitapur .

No A/ Bounabhari dated the 24.2.1969



As approved by S. Pos Sitapur vide his letter no A- 92 dated 20.2.69 , Shri Bal Krishna S/O Shri Kashi Ram Village And Post Office Bouna Bhari is appointed as B.P.M. Bauna Bhari with immediate effect x vice Shri Sheo Prasad who has already completed the prescribed age limit .

Charge report should be submitted .

Copy to ; -

Sd - _____

1. Sheo Prasad, B.P.M.

Nirikshak Dak Vibhag

2. Shri Bal Krishna

Sitapur Uttar up Prakhanda

3. P.M. Sitapur

Sitapur

4. Line O/S II Sitapur He will get the charge transferred and submit documents at once .

Tc.

बालकृष्ण अवस्थी

11

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

(Lucknow Bench) , Lucknow . A24

W.P. No. of 1983 .

Bal Krishna Awasthi aged about 42 years

S/O Kashi Ram, R/O Bouna Bhari, P.O. Bouna

Bhari P.S. Sidhauri , Distt. Sitapur . - - Petitioner.

Versus

Union of India and others - - Opp. Parties .

Annexure 2

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL SIDE

~~ELATE~~
~~APPLICATE~~ JURISDICTION

DATED ALLAHABAD THE :10 th day of July 1978 .

Present .-

The Hon'ble :- S. Malik Judge .

&

The Hon'ble:- M.P. Saxena Judge .

Criminal Appeal No. 2611 of 1972.

Sheo Sharma and others versus..... State.

District :-: Sitapur .

JUDGMENT

(Delivered by Hon'ble: ; Saxena J)

Sheo Sharma, Bal Kishan, Laloo alise Mathura. Ram charan, Jaganath Ram Naresh , Parmeshwar and Shatruhan have filed this appeal against the judgment and order dated 26.8.1972 passed by the then Civil and Sessions Judge, Sitapur, convicting them under sections 147 and 302 read with 149 I.P.C. and sentencing them to six month's R.I. and imprisonment for life respectively. Ram Charan and Bal Kishun appellants were further convicted under section 325 I.P.C. and were sentenced to three month's

बालकृष्ण अवस्थी

R.I. each all the sentences were made to run concurrently.

X X X X X X

The appeal is allowed and the appellant's conviction under the aforesaid counts and the sentence awarded thereunder are set aside . They are on bail and and need not suffender . The bonds furnished by them are cancelled .

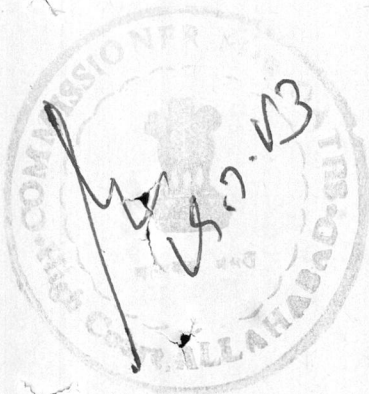
Dated/10.7.1978.

Sd/-S.M.

Sd/- M.P.Saxena.

T. e.

बालकृष्ण ठावरजी



माननीय उच्च न्यायालय इलाहाबाद ॥ लखनऊ पीठिका ॥ लखनऊ ।

रिट पिटीशन नं०

वर्ष 1983.

बाल कृष्ण अवस्थी

पिटीशनर.

बनाम

यूनियन आफ इण्डिया एण्ड अदर्स

विपक्षीगण.

एनेक्जर नं०- 3रजिस्टर्ड ए/डी

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भारतीय डाकतार विभाग

कार्यालय अधीक्षक डाक विभाग सीतापुर प्रखंड

ज्ञापन संख्या- ए-65/ई

दिनांक सीतापुर 3-1-80

श्री बाल कृष्ण अवस्थी अतिरिक्त विभागीय शाखा डाकपाल बौनाभारी सीतापुर को एतद्वारा सूचित किया जाता है कि अतिरिक्त विभागीय एजेंटों की आचार एवं सेवा नियमावली 1964 के अन्तर्गत उनके विरुद्ध कार्यवाही ~~प्रस्तावित~~ करने का प्रस्ताव किया जाता है एक आरोप पत्र जिसके आधार पर उनके विरुद्ध कार्यवाही प्रस्तावित की गई है साथ में संलग्न है ।

श्री बाल कृष्ण अवस्थी को एतद्वारा प्रस्ताव के विरुद्ध जैसा कि वह देना चाहे स्पष्टीकरण देने का एक अवसर प्रदान किया जाता है ।

यदि श्री बाल कृष्ण अवस्थी इस ज्ञापन पत्र की प्राप्ति के दस दिन के अन्दर अपना प्रतिवेदन भेजने में असफल रहते हैं तो यह समझा जायेगा कि वह प्रतिवेदन नहीं करना चाहते हैं । तथा श्री बाल कृष्ण अवस्थी के विरुद्ध एकपक्षीय निर्णय के आदेश कर दिये जायेंगे ।

श्री बाल कृष्ण अवस्थी को इस ज्ञापन पत्र की पावती भेजनी चाहिये ।

ह०/- अपठित

अधीक्षक-डाक विभाग

सीतापुर प्रखंड - 261001

पंजीकृत/पावती सहित
श्री बाल कृष्ण अवस्थी
भूतपूर्व शाखा डाकपाल
ग्राम पो० बौनाभारी
जिला - सीतापुर

सत्य प्रतिलिपि

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बालकृष्ण अवस्थी

श्री बाल कृष्ण अवस्थी भूतपूर्व अति० विभागीय शाखा डाकपाल बौनाभारी के विरुद्ध लगाये गये अवचार एवं कदाचार के लाक्षणों का विवरण ।

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श्री बाल कृष्ण अवस्थी भूतपूर्व शाखा डाकपाल बौनाभारी जब उक्त पद पर कार्य कर रहे थे तो उन्होंने निम्नलिखित अनियमिततायें करीं ।

॥1॥ श्री बाल कृष्ण अवस्थी अ०वि० शाखा डाकपाल बौनाभारी दि० 5-10-71 से 15-11-71 तक अवकाश पर रहे । तथा उसके पश्चात लगातार अनुपस्थित रहे । और इस प्रकार उनकी अनुपस्थित 180 दिन से अधिक है ।

॥2॥ श्री बाल कृष्ण अवस्थी अ०वि० शाखा डाकपाल बौनाभारी दि० 5-10-71 को पुलिस के द्वारा धारा 302 में गिरफ्तार कर लिये गए थे । लेकिन उन्होंने इसकी सूचना नहीं दी तथा अपनी गिरफ्तारी की सूचना को छिपाते हुए बीमारी का कारण लिखते हुए अवकाश के लिए प्रार्थनापत्र दिया । इस प्रकार उन्होंने तथ्यों को छिपाया ।

इस प्रकार श्री बाल कृष्ण अवस्थी शाखा डाकपाल बौनाभारी के विरुद्ध निम्न आरोप प्रस्तावित किये जाते हैं ।

॥1॥ श्री बाल कृष्ण अवस्थी भूतपूर्व शाखा डाकपाल बौनाभारी दि० 16-11-71 के बाद बराबर अनुपस्थित रहे । इस प्रकार उनकी अनुपस्थित 180 दिन से अधिक है । उन्होंने अ०वि० अभिकर्ता ॥ आचरण एवं सेवा ॥ नियमावली 1964 के नियम 5॥5॥ का उल्लंघन किया ।

॥2॥ श्री बाल कृष्ण अवस्थी भूतपूर्व शाखा डाकपाल बौनाभारी ने अपनी गिरफ्तारी की सूचना को छिपाया तथा बीमारी का कारण दिखाकर अवकाश के लिए प्रार्थनापत्र दिया । इस प्रकार उन्होंने अति० विभागीय अभिकर्ता ॥ आचरण एवं सेवा ॥ नियमावली 1964 के नियम-17 में अपेक्षित सत्य एवं कर्तव्य निष्ठा से कार्य नहीं किया ।

ह०/- अपठित

अधीक्षक डाक विभाग

सीतापुर प्रखण्ड - 261001

सत्य प्रतिलिपि

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बालकृष्ण अवस्थी

माननीय उच्च न्यायालय इलाहाबाद ॥ लखनऊ पीठिका ॥ लखनऊ ।

रिट पिटीशन नं०

वर्ष 1983.

बाल कृष्ण अवस्थी

पिटीशनर.

बनाम

यूनियन आफ इण्डिया एण्ड अदर्स

विपक्षी गण.

एनेक्जर नं०- 4

जांच आख्या

कार्यालय

ई ओ/ बौनाभारी

दिनांक 16-3-81

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श्री बालकृष्ण अवस्थी भू.पू. शाखा डाकपाल
बौनाभारी के विरुद्ध नियम 14 सी.सी.एस.
॥सी.सी.ए.॥ नियम 1965 के तदनुस्य कार्यवाही
की जांच आख्या ।

----- x -----

श्री बाल कृष्ण अवस्थी भू. पू. शाखा डाकपाल बौनाभारी सीतापुर
के विरुद्ध डाक अधीक्षक सीतापुर के ज्ञापन ए-65/ई दि० 3.1.80 के द्वारा आरोप
पत्र दिया गया जिसका उत्तर उन्होंने अपने पत्र दि० 14.1.80 में दिया ।
डाक अधीक्षक सीतापुर ने ज्ञापन सं० समान दिनांक 8.2.80 के द्वारा प्रस्थापित
आरोपों की जांच नियम 14 सी.सी.एस. ॥सी.सी.ए.॥ नियम 1965 के तदनुस्य
निश्चित करने का निर्णय लिया गया तथा अधोहस्ताक्षरकर्ता को जांच अधिकारी
तथा श्री बैजनाथ निरीक्षक ॥के॥ सीतापुर को 10.7.80 तक तत्पश्चात श्री यमुना
सिंह निरीक्षक ॥के॥ सीतापुर को प्रस्तुति अधिकारी नियुक्त किया । श्री मुन्नी
दुबे स. अ. परि. कार्यालय लखनऊ ने बचाव सहायक के रूप में कार्य किया ।
उपरोक्त मामले की जांच दि० 10.7.80 को प्रारंभ तथा 12.3.81 को समाप्त
की गई ।

आरोप-पत्र



माननीय उच्च न्यायालय इलाहाबाद ॥ लखनऊ पीठिका ॥ लखनऊ ।

रिट पिटीशन नं०

वर्ष 1983.

बाल कृष्ण अवस्थी

पिटीशनर.

बनाम

यूनियन आफ इण्डिया एण्ड अदर्स

विपक्षीगण.

एनेक्जर नं०- 4

जांच आख्या

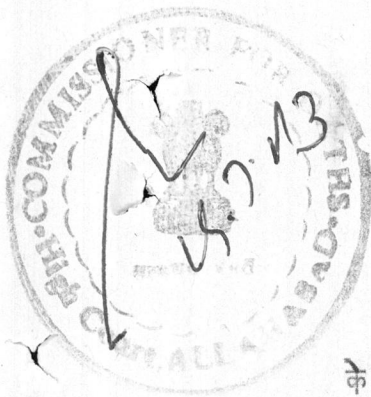
कार्यालय

ई ओ/ बौनाभारी

दिनांक 16-3-81

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श्री बालकृष्ण अवस्थी भू.पू. शाखा डाकपाल
बौनाभारी के विरुद्ध नियम 14 सी.सी.एस.
॥सी.सी.ए.॥ नियम 1965 के तदनुस्य कार्यवाही
की जांच आख्या । ----- x -----



श्री बाल कृष्ण अवस्थी भू. पू. शाखा डाकपाल बौनाभारी सीतापुर के विरुद्ध डाक अधीक्षक सीतापुर के ज्ञापन ए-65/ई दि० 3.1.80 के द्वारा आरोप पत्र दिया गया जिसका उत्तर उन्होंने अपने पत्र दि० 14.1.80 में दिया । डाक अधीक्षक सीतापुर ने ज्ञापन सं० समान दिनांक 8.2.80 के द्वारा प्रस्थापित आरोपों की जांच नियम 14 सी.सी.एस. ॥सी.सी.ए.॥ नियम 1965 के तदनुस्य निश्चित करने का निर्णय लिया गया तथा अधोहस्ताक्षरकर्ता को जांच अधिकारी तथा श्री बैजनाथ निरीक्षक ॥के॥ सीतापुर को 10.7.80 तक तत्पश्चात श्री यमुना सिंह निरीक्षक ॥के॥ सीतापुर को प्रस्तुति अधिकारी नियुक्त किया । श्री मुन्नी दुबे स. अ. परि. कार्यालय लखनऊ ने बचाव सहायक के रूप में कार्य किया । उपरोक्त मामले की जांच दि० 10.7.80 को प्रारंभ तथा 12.3.81 को समाप्त की गई ।

आरोप-पत्र

उपरोक्त श्री बाल कृष्ण के विरुद्ध प्रस्थापित आरोपों का विवरण निम्न प्रकार है :-

" श्री बाल कृष्ण अवस्थी भूतपूर्व शाखा डाकपाल बौनाभारी जब उक्त पद पर कार्य कर रहे थे, तब उन्होंने निम्नलिखित अनियमितताएँ कीं:-

॥1॥ श्री बाल कृष्ण अवस्थी अ.वि.शाखा डाकपाल बौनाभारी दि० 5-10-71 से 15-11-71 तक अवकाश पर रहे तथा उसके पश्चात लगातार अनुपस्थित रहे और इस प्रकार उनकी अनुपस्थिति 180 दिन से अधिक है ।

॥2॥ श्री बाल कृष्ण अवस्थी अ.वि.शा. डाकपाल बौनाभारी दि० 5.10.71 को पुलिस के द्वारा धारा 302 में गिरफ्तार कर लिये गये थे लेकिन उन्होंने इसकी सूचना नहीं दी तथा अपनी गिरफ्तारी की सूचना को छिपाते हुये बीमारी का कारण लिखते हुये अवकाश का प्रार्थना पत्र दिया । इस प्रकार उन्होंने तथ्यों को छिपाया ।

इस प्रकार श्री बाल कृष्ण अवस्थी शा.डा.पाल बौनाभारी के विरुद्ध निम्न आरोप प्रस्थापित किये जाते हैं ।

॥1॥ श्री बाल कृष्ण अवस्थी भू.पू. शा. डाकपाल बौनाभारी दि० 16.11.71 के बाद बराबर अनुपस्थित रहे । इस प्रकार उनकी अनुपस्थिति 180 दिन से अधिक है । उन्होंने अ.वि.अभिकर्ता ॥आचरण एवं सेवा॥ नियमावली 1964 के नियम ॥5॥ 5 का उल्लंघन किया ।

॥2॥ श्री बाल कृष्ण अवस्थी भू.पू.शाखा डाकपाल बौनाभारी ने अपनी गिरफ्तारी की सूचना को छिपाया तथा बीमारी का कारण दिखाकर अवकाश के लिये प्रार्थना पत्र दिया । इस प्रकार उन्होंने अ.वि.अभिकर्ता ॥आचरण एवं सेवा॥ नियमावली 1964 के नियम 17 में अपेक्षित सत्य एवं कर्तव्य निष्ठा से कार्य नहीं किया ।

अभिलेख का विवेचन

अभियोजन पक्ष ने श्री बाल कृष्ण अवस्थी के ^{अवकाश के} चार प्रार्थना पत्र, 5.10.71 से 7.10.71 तक ॥एकज.क-1॥ 8.10.71 से 20.10.71 तक ॥एकज.क-2॥ 21.10.71 से 31.10.71 तक ॥एकज.क-3॥ 1.11.71 से 15.11.71 तक ॥एकज.क-4॥ प्रस्तुत किया । इन साक्ष्यों में से एकज.क-1, एकज.क-2 और एकज.क-3 अभियुक्त द्वारा स्वीकार किया गया और एकज.क-4 अस्वीकार किया गया अभियोजन पक्ष के साक्ष्य एकज.क-4 को सत्यापित न किया जा सका क्योंकि इस पर दूसरे हस्ताक्षरकर्ता श्री मिश्रीलाल की मृत्यु हो चुकी है ।

बचाव पक्ष ने निरीक्षण दि० 6.10.71 का प्रारंभ पैरा-1 व 2 जो एकज.ख-1 है, निरीक्षण दि० 30.5.72 का पैरा 1 जो एकज.ख-2 है । सिविल एण्ड सेशन जज सीतापुर केस 117/72 का अनुच्छेद जो एकज.ख-3 है तथा हाईकोर्ट इलाहाबाद की अपील 2611/72 का निर्णय जो एकज.ख-4 है प्रस्तुत किया ।

आत्मकृत अवस्थी

बचाव पक्ष ने श्री मधुरा प्रसाद डी.डब्लू.-1 तथा अभियुक्त बाल कृष्ण अवस्थी को साक्ष्य के रूप में भी प्रस्तुत किया ।

विवेचना :-
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आरोप सं०-1 :- यह है कि अभियुक्त दि० 16.11.71 से बिना किसी प्रार्थना पत्र के अनुपस्थित रहे तो इस विषय में अभिलेख और साक्ष्यों के बयान से यह सिद्ध हुवा कि श्री बाल कृष्ण 5.10.71 से 31.10.71 तक अवकाश पर थे इसके पश्चात श्री बाल कृष्ण 22.10.71 को न्यायालय में उपस्थित हुए । श्री बाल कृष्ण ने एक्ज.ख-3 के अनुसार स्वयं को गिरफ्तारी के लिए 20.10.71 को हाजिर किया था यह मामला एक कत्ल का था जिसमें श्री बाल कृष्ण अभियुक्त थे । श्री बाल कृष्ण के बयान के अनुसार सम्बन्धित कत्ल 4.10.71 को हुवा था और श्री बाल कृष्ण इसके पश्चात अवकाश पर 5.10.71 से रहे । श्री बाल कृष्ण के इस कथन पर कि उन्हें 4.10.71 से 21.10.71 तक यह ज्ञात न हो सका कि वे कत्ल के केस में अभियुक्त हैं विश्वसनीय नहीं है । फिर भी दि० 22.10.71 को उनके द्वारा किया गया आत्म समर्पण इस बात का प्रमाण है कि वे इस मामले की पूरी जानकारी रखते थे और अपने को गिरफ्तार कराने ही अदालत में हाजिर हुए थे । वे 13 माह तक जेल में रहे और इसे उन्होंने प्रार्थना पत्र देने में अपनी असमर्थता का प्रमाण दिया । इस मुकदमे के दौरान उन्होंने जेल में रहते हुए भी अपने वकील के द्वारा अनेक बार लिखा पढ़ी की होगी । अतः यह कहना पूर्णतया विश्वास के योग्य नहीं है कि उन्होंने जेल में रहने के कारण ही अवकाश का कोई प्रार्थनापत्र नहीं दिया । साथ ही जब वे जमानत पर छूट कर आये थे तो अपनी इस असमर्थता को डाक अधिकारियों को बता सके थे तथा प्रार्थना पत्र न देने का कारण बता सकते थे जैसा कि उन्होंने नहीं किया । अतः यह सिद्ध है श्री बालकृष्ण ने दि० 31.10.71 के पश्चात कोई अवकाश का प्रार्थनापत्र नहीं दिया । इस सम्बन्ध में यदि वे चाहते तो जेल से उचित माध्यम से पत्र व्यवहार कर सकते थे परन्तु उन्होंने यह भी नहीं किया ।

आरोप सं०-2 :- यह है कि श्री बाल कृष्ण अवस्थी ने अपनी गिरफ्तारी की सूचना को छिपाया । आरोप पत्र में प्रदर्शित यह आरोप कि वे 5.10.71 को पुलिस द्वारा गिरफ्तार किये गये सिद्ध नहीं होता अपितु यह सिद्ध हुवा कि उन्होंने स्वयं 22.10.71 को न्यायालय में आत्मसमर्पण किया । इसे अभियुक्त ने स्वीकार किया है कि वह दि० 21.10.71 को कत्ल की जानकारी होने पर न्यायालय में 22.10.71 को हाजिर हुए उनके पास न्यायालय में उपस्थित होने

बालकृष्ण अवस्थी

के अपने निर्णय के बाद पर्याप्त समय था कि वे इस सम्बन्ध में सूचना डाक-अधिकारियों को देकर न्यायालय में उपस्थित होते परन्तु उन्होंने ऐसा नहीं किया जमानत पर छूटने के बाद भी उन्होंने अपनी पूर्व गिरफ्तारी की कोई सूचना नहीं दी। अस्वस्थता के विषय में अभियुक्त का स्वयं बयान है कि वह अदालत में हाजिर होने अकेले आये थे और उन्हें कोई ऐसी बीमारी नहीं थी कि पलंग पर पड़े रहें जिससे ज्ञात होता है कि वे चलने फिरने के योग्य थे उनका यह कथन कि - निरीक्षण रिपोर्ट अथवा ओवरसियर की मासिक निरीक्षण रिपोर्ट से उनके जेल में होने की बात ज्ञात हुयी होगी से यह निष्कर्ष नहीं निकलता कि उन्होंने कोई सूचना इस सम्बन्ध में विभाग के किसी भी अधिकारी को दी। अभियुक्त के बयान से यह सिद्ध होता है कि हाई कोर्ट से दोषमुक्त होने पर ही उन्होंने इसकी सूचना डाक अधीक्षक को दी तथा यह भी स्पष्ट है कि इससे पहले किसी भी स्तर पर उन्होंने कोई सूचना डाक अधिकारियों को नहीं दी अतः आरोप कि दि० 5.10.71 को अभियुक्त पुलिस द्वारा गिरफ्तार किया गया सिद्ध नहीं है परन्तु उसका दूसरा अंश कि उन्होंने अपनी गिरफ्तारी की सूचना को छिपाया सत्यसिद्ध है। ~~वे दि० 22.10.71 को~~ वे दि० 22.10.71 को न्यायालय में उपस्थित होकर अपनी गिरफ्तारी दिया और इसकी सूचना डाक अधिकारियों को नहीं दिया।

निष्कर्ष :-

उपरोक्त विवेचना के आधार पर आरोप सं०-1 इस सीमा तक सिद्ध है कि अभियुक्त ने 31.10.71 के बाद अवकाश के लिये कोई प्रार्थना पत्र नहीं दिया तथा आरोप 2 इस सीमा तक सिद्ध है कि दि० 22.10.71 को न्यायालय में आत्म समर्पण से पूर्व उन्होंने कोई सूचना नहीं दी।

ह०/- अपठित
डाक निरीक्षक ~~द०~~
सीतापुर।

संलग्न - कार्यवाही पंजिका
अभिलेख एकज.क-1 से क-4
एकज.ख-1 से ख-4
प्र.अ. का सार
बचाव सं. का सार।

सत्य प्रतिलिपि

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पालकुरा अवस्था

माननीय उच्च न्यायालय इलाहाबाद ॥ लखनऊ पीठिका ॥ लखनऊ ।

रिट पिटीशन नं०

वर्ष 1983.

बाल कृष्ण अवस्थी

----- पिटीशनर.

बनाम

यूनियन ऑफ इण्डिया एण्ड अदर्स

----- विपक्षीगण.

एनेक्जर नं०- 5

भारतीय डाकतार विभाग

कार्यालय अधीक्षक डाकविभाग सीतापुर प्रखंड - 261001

ज्ञापन संख्या ए०-65/ई

दिनांक सीतापुर 11-5-81

श्री बालकृष्ण अवस्थी शाखाडाकपाल बौनाभारी पर इस कार्यालय के ज्ञापन संख्या यही दि० 3-1-80 से निम्न आरोप लगाये गये थे ।

1- श्री बालकृष्ण अवस्थी अति० विभागीय शाखाडाकपाल बौनाभारी दि० 5-10-71 से 15-11-71 तक अवकाश पर रहे तथा उसके पश्चात् लगातार अनुपस्थित रहे और इस प्रकार उनकी अनुपस्थित 180 दिन से अधिक है ।

2- श्री बालकृष्ण अवस्थी अति० वि० शाखाडाकपाल बौनाभारी दि० 5-10-71 को पुलिस के द्वारा धारा 302 में गिरफ्तार कर लिये गये थे लेकिन उन्होंने इसकी सूचना नहीं दी तथा अपनी गिरफ्तारी की सूचना को छिपाते हुये बीमारी के कारण लिखते हुये अवकाश के लिये प्रार्थनापत्र दिया । इस प्रकार उन्होंने तथ्यों को छिपाया ।

इस प्रकार श्री बालकृष्ण अवस्थी शाखाडाकपाल बौनाभारी के विरुद्ध निम्न आरोप प्रस्थापित किये जाते हैं ।

1- श्री बालकृष्ण अवस्थी भूतपूर्व शाखाडाकपाल बौनाभारी दि० 16-11-71 के बाद बराबर अनुपस्थित रहे इस प्रकार उनकी अनुपस्थित 180 दिन से अधिक है । उन्होंने अति० वि० अभिकर्ता ॥ आचरण एवं सेवा ॥ नियमावली 1964 के नियम 5 ॥ 5 ॥ का उल्लंघन किया ।

2- श्री बालकृष्ण अवस्थी भूतपूर्व शाखाडाकपाल बौनाभारी ने अपनी गिरफ्तारी की सूचना को छिपाया तथा बीमारी का कारण दिखाकर अवकाश के लिये प्रार्थनापत्र दिया इस प्रकार उन्होंने अति० वि० अभिकर्ता ॥ आचरण एवं सेवा ॥ नियमावली 1964 के नियम 17 में अपेक्षित सत्य एवं निष्ठा से कार्य नहीं किया ।

बालकृष्ण अवस्थी

उपरोक्त आरोपों की जाँच करने हेतु नियम 14 सी०सी०एस० सी०सी०एस० नियमावली 1965 के तदनुस्र श्री बालकृष्ण अवस्थी अभियुक्त को पूर्ण अवसर दिया गया कि वे अपना बचाव प्रस्तुत कर सकें ।

इस जाँच में श्री श्रीकृष्ण मिश्रा डाकनिरीक्षक सीतापुर ॥द०॥ ने जाँच अधिकारी श्री यमुना सिंह डाकनिरीक्षक सीतापुर ॥सेन्ट्रल॥ ने प्रस्तुति अधिकारी तथा श्री मुन्नी दुबे डिप्टी आफिस सुपरिन्टेन्डेन्ट डाकमहाध्वज कार्यालय लखनऊ ने बचाव सहायक के रूप में कार्य किया । जाँच अधिकारी ने जाँच आख्या दि० 16-3-81 को प्रस्तुत की जिसमें उपरोक्त आरोपों की विवेचना की गई । जाँच अधिकारी की जाँच आख्या की एक प्रति संलग्न है ।

मैंने सम्पूर्ण मामले अभिलेख और साक्ष्यों तथा जाँच अधिकारी की जाँच रिपोर्ट का जाँच आख्या के संबंध में सावेधानी से अध्ययन किया और इस निष्कर्ष पर पहुँचा कि जाँच अधिकारी के द्वारा प्रस्तुत जाँच आख्या में निष्पत्ति निष्कर्ष उचित है और मैं उनसे पूर्णरूपेण सहमत हूँ तथा श्री बालकृष्ण अवस्थी अभियुक्त के विरुद्ध लगाये गये आरोपों को सिद्ध पाता हूँ ।

मैं तुफैल अहमद अधीक्षक डाकविभाग सीतापुर प्रखंड सीतापुर श्री बालकृष्ण अवस्थी अति०वि० शाखाडाकपाल बौनाभारी जिला सीतापुर की सेवायें शाखाडाकपाल बौनाभारी के पद से दि० 1-11-71 जिस तिथि से वे बिना सूचना के अनुपस्थित थे समाप्त किये जाने का आदेश पारित करता हूँ ।

ह०/- अपठित

अधीक्षक डाकविभाग

सीतापुर प्रखंड - 261001

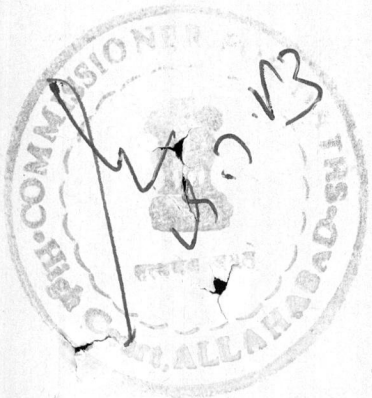
प्रतिलिपि :

- 1- श्री बालकृष्ण अवस्थी भूतपूर्व शाखाडाकपाल बौनाभारी ॥सिधौली॥ सीतापुर
- 2- डाकनिरीक्षक सीतापुर ॥केन्द्रीय॥
- 3- डाकपाल सीतापुर
- 4- कार्यालय प्रतिलिपि
- 5- "एफ" शाखा प्र० कार्यालय सीतापुर

सत्य प्रतिलिपि

=====

बालकृष्ण अवस्थी



माननीय उच्च न्यायालय इलाहाबाद ॥ लखनऊ पीठिका ॥ लखनऊ ।

रिट पिटीशन नं०

वर्ष 1983.

बाल कृष्ण अवस्थी

----- पिटीशनर.

बनाम

यूनियन आफ इण्डिया एण्ड अदर्स

----- विपक्षीगण.

एनेक्जर नं०- 6

सेवा में,

श्रीमान् रीजन्स डाइरेक्टर,
पोस्टल सर्विसेज,
लखनऊ रीजन,
लखनऊ ।

विषय :- डाक-अधीक्षक सीतापुर के आदेश ए-65/ई दि० 11.5.81 के विरुद्ध अपील, जिसके द्वारा प्रार्थी ॥अपीलकर्ता॥ की सेवाएं शाखा डाकपाल बौनाभारी के पद से दिनांक 1.11.71 से समाप्त किए जाने का आदेश पारित किया गया है ।

महोदय,

अपीलकर्ता, बाल कृष्ण अवस्थी भूतपूर्व शाखा डाकपाल बौनाभारी, जिला-सीतापुर उपरोक्त आदेश के विरुद्ध अपील आपके सम्मुख विचारार्थ प्रस्तुत करता है ।

संक्षेप में केस का विवरण निम्नलिखित है :-

अपीलकर्ता को शाखा डाकपाल बौनाभारी के पद पर डाक-अधीक्षक सीतापुर के मेमो नं० ए-92 दिनांक 20.2.69 के द्वारा नियुक्त किया और उसने अपना कार्य सन्तोषप्रद ढंग से दिनांक 5-10-1971 तक किया, जब कि वह बीमार पड़ गया और अवकाश के लिए प्रार्थना पत्र दिया तथा अपनी जिम्मेदारी पर श्री मिश्रीलाल को लगाया । उसने तीन प्रार्थना पत्र दिनांक 5-10-71, 8-10-71 तथा 21-10-71 क्रमशः 5-10-71 से 7-10-71, 8-10-71 से 20-10-71 और 21-10-71 से 31-10-71 तक के लिए दिया । इसी बीच दिनांक 21-10-71 को उसे आभास मिला कि उसे एक हत्या ॥मर्डर॥ के केस में फंसाया गया है और इसकी जानकारी करने के लिए दिनांक 22-10-71 को जब वह कचहरी गया, तब उसे जेल भेज दिया गया । करीब तेरह महीने बाद उसकी जमानत हुई और अन्त में अपील करने पर उसे हाईकोर्ट के निर्णय दिनांक 20-7-78 के द्वारा उसे अभियोग

बालकृष्ण अवस्थी

क्रमशः .. 2 ..

से मुक्त कर दिया गया। दोष मुक्त होने पर अपीलकर्ता ने डाक-अधीक्षक सीतापुर से सम्पर्क स्थापित किया कि उसे शाखा डाकपाल बौनाभारी के पद पर बहाल कर दिया जावे। डाक-अधीक्षक सीतापुर ने अपने मेमो दिनांक 3-1-80 के द्वारा एक आरोप पत्र दिया, जिसका उत्तर अपीलकर्ता ने शीघ्र ही दे दिया, जिसमें उपरोक्त बातें कही गई थीं परन्तु शाखा डाकपाल के पद पर अपीलकर्ता को बहाल न करके डाक-अधीक्षक ने विभागीय जांच का आदेश दिया और अपने मेमो नं० ए-65/ई दिनांक 8.2.80 के द्वारा श्री श्री कृष्ण मिश्रा डाक-निरीक्षक [दक्षिणी] को जांच अधिकारी नियुक्त किया। जांच की प्रक्रिया दिनांक 12.3.1981 तक चलती रही और उसी दिन बचाव-पक्ष का ब्रीफ प्रस्तुत किया गया। ब्रीफ में स्पष्ट किया गया था कि अपीलकर्ता के विरुद्ध लगाये गये आरोप निस्सार, निराधार, निर्मूल एवं असत्य हैं। जांच अधिकारी ने पक्षपातपूर्ण ढंग से लगाये गये आरोपों से भिन्न किसी सीमा तक आरोपों का सिद्ध होना बताया। जांच अधिकारी की रिपोर्ट पर डाक-अधीक्षक ने अपीलकर्ता की सेवाएं शाखा डाकपाल बौनाभारी के पद से दिनांक 1-11-71 से समाप्त करने का आदेश पारित किया। ऐसा करने में विद्वान डाक-अधीक्षक ने न्याय का पालन नहीं किया। अपीलकर्ता उपरोक्त आदेश से दुःखी होकर आपके समक्ष अपील प्रस्तुत करता है।

अपील के तर्क

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अपीलकर्ता के विरुद्ध पहला आरोप यह है कि वह दिनांक 16.11.71 के बाद बराबर अनुपस्थित रहा। इस प्रकार उसकी अनुपस्थिति 180 दिन से अधिक है। उसने अ०वि०अधिकर्ता [आचरण एवं सेवा] नियमावली 1964 के विषय 5[5] का उल्लंघन किया।

जांच-अधिकारी के समक्ष प्रस्तुत साक्ष्यों से सिद्ध हो चुका है कि अपीलकर्ता ने छुट्टी के लिए तीन प्रार्थना-पत्र दिया था, जिनकी कुल अवधि 5-10-71 से 31-10-71 तक थी। परन्तु इसी बीच एक कत्ल के केस में फंसा दिए जाने के कारण अपीलकर्ता को जानकारी हेतु कोर्ट जाना पड़ा और वह वहां से उसी दिन दिनांक 22-10-71 को जेल भेज दिया गया। अतः वास्तविक रूप में अवकाश 22-10-71 तक ही मान्य हो सकता है, उसके बाद, जेल चले जाने के कारण अवकाश पर होने या अवकाश लेने का प्रश्न नहीं उठता। दिनांक 22-10-71 के बाद अनुपस्थित होने का प्रश्न भी नहीं उठता है क्योंकि जेल में होने के कारण साधारण स्थिति लागू नहीं होती। आचरण एवं सेवा नियमावली 1964 के नियम 5[5] का भी उल्लंघन नहीं कहा जा सकता, क्योंकि जेल में

वास्तविक अवस्था

होने के कारण यह नियम लागू ही नहीं होता । उक्त नियम तब लागू होता है जब ई.डी.ए. स्वेच्छा से 180 दिन से ऊपर अपनी इयूटी से अनुपस्थित रहता है ।

जेल जाने के तुरन्त बाद ही अपीलकर्ता पुट-आफ होने का पात्र था और उसी के अनुसार न्यायतः कार्यवाही हो सकती है ।

आरोप नम्बर 2 में कहा गया है कि अपीलकर्ता को दिनांक 5.10.71 को पुलिस के द्वारा धारा 302 में गिरफ्तार कर लिया गया था, लेकिन अपीलकर्ता ने इसकी सूचना नहीं दी, उसे छिपाया तथा बीमारी का कारण दिखाकर अवकाश के लिए प्रार्थना-पत्र दिया ।

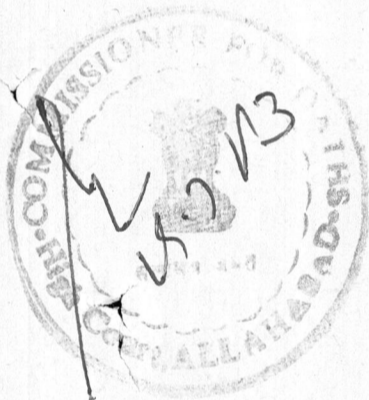
अभियोजन पक्ष ने कोई भी ऐसा साक्ष्य जांच के समक्ष प्रस्तुत नहीं किया जिससे उसका आरोप सिद्ध होता । वस्तुतः प्रार्थी को पुलिस ने न तो ~~8*8*8*8~~ दिनांक 5-10-71 को गिरफ्तार किया था और न इसे छिपाया । बीमारी का कारण वास्तविक था और इसीलिए अवकाश लिया गया था, जैसा कि प्रार्थना पत्रों से स्पष्ट है । यदि अपीलकर्ता दिनांक 5-10-71 को गिरफ्तार किया गया होता, तो डाक-निरीक्षक अपनी निरीक्षण रिपोर्ट दिनांक 6-10-71 में इसका उल्लेख अवश्य करते । परन्तु ऐसा कुछ नहीं था । लगाया गया आरोप निर्मूल एवं असत्य है ।

अपील के आधार

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- 1- जांच अधिकारी ने अपनी रिपोर्ट में लिखा है कि आरोप नं०-1 इस सीमा तक सिद्ध है कि अपीलकर्ता ने 31-10-71 के बाद अवकाश के लिए कोई प्रार्थना-पत्र नहीं दिया तथा आरोप 2 इस सीमा तक सिद्ध है कि 22-10-71 को न्यायालय में आत्म-समर्पण से पूर्व उसने कोई सूचना नहीं है । जांच-अधिकारी द्वारा निकाले गये निष्कर्ष लगाये गये आरोपों से सर्वथा भिन्न हैं और उनको ऐसा करने का अधिकार नहीं है जब तक कि नये आरोपों का प्रतिवाद करने का अवसर अपीलकर्ता को न दिया जावे ।
- 2- दिनांक 31-10-71 के बाद अवकाश के लिए प्रार्थना-पत्र देने का कोई भी औचित्य नहीं था क्योंकि प्रार्थी दिनांक 22-10-71 को जेल भेज दिया गया था और जेल जाने के बाद अवकाश के लिए प्रार्थना-पत्र देने का कोई प्रश्न नहीं था ।
- 3- विभाग को किसी प्रकार पता चल गया था कि अपीलकर्ता को पुलिस ने दिनांक 5.10.71 को गिरफ्तार कर लिया था ~~यद्यपि यह सत्य नहीं था~~ परन्तु विभाग ने अपनी जानकारी का स्रोत एवं उसके ऊपर कृत कार्यवाही को गुप्त रखा जो रहस्यात्मक है ।

- 4- जेल जाने के बाद नियमतः पुट-आफ होना चाहिए था । अतः पुट-आफ होने के बाद अवकाश के लिए प्रार्थना-पत्र देने का कोई प्रश्न नहीं है ।
- 5- जांच अधिकारी का यह निष्कर्ष कि अपीलकर्ता ने 22.10.71 को न्यायालय में आत्म समर्पण से पूर्व कोई सूचना नहीं दी , प्रमात्मक, आधारहीन एवं आरोप नं०-2 के सर्वथा विपरीत होने के कारण उनके अधिकार क्षेत्र से परे है । अपीलकर्ता ने दिनांक 5-10-71, 8-10-71 और 20-10-71 को लगातार अपनी बीमारी की सूचना भेजी परन्तु 22-10-71 को कोर्ट से जेल भेज दिए जाने के कारण आगे सूचना भेजना सम्भव नहीं था । फिर भी जेल जाने की सूचना कोई छिपी बात नहीं थी तथा डाक-घर के ओवर-सीयर को जो प्रति माह निरीक्षण करने डाक-घर पर आते हैं अवश्य मिली होगी । अतः आरोप और जांच अधिकारी द्वारा निष्पादित निष्कर्ष दोनों ही आधार हीन एवं निस्सार हैं ।
- 6- विद्वान डाक-अधीक्षक ने अपने मेमो में लिखा है कि वे जांच-अधिकारी की आख्या में निरूपित निष्कर्ष से पूर्ण रूप से सहमत हैं और जांच अधिकारी ने लगाये गये आरोपों को अपने द्वारा प्रतिपादित सीमा तक सत्य पाया जाना लिखा है, फिर भी डाक-अधीक्षक ने लगाये गये आरोपों को सिद्ध पाया है । डाक-अधीक्षक का कथन स्वयं एक दूसरे के प्रतिकूल है । यदि वे जांच अधिकारी के निष्कर्ष से सहमत हैं तो आरोप पूर्णतया सिद्ध नहीं होते और यदि लगाये गये आरोप सिद्ध हैं तो वे जांच अधिकारी के निष्कर्ष से सहमत नहीं हैं । वैसी दशा में उन्हें कारण दर्शाना चाहिए था । इससे स्पष्ट है कि विद्वान डाक-अधीक्षक सीतापुर ने केस का सम्यक निरूपण करके निर्णय नहीं लिया है ।
- 7- अपीलकर्ता के विरुद्ध लगाये गये आरोप सर्वथा आधार हीन एवं निस्सार हैं । जांच में कोई भी आरोप सिद्ध नहीं हुआ है । फिर भी सेवा से पृथक् करना न्यायोचित नहीं है ।
- 8- यह भी विचारणीय है कि प्रार्थी को किस हैसियत से विभाग में माना गया है तथा विभागीय कार्यवाही के पूर्व उसकी ^{क्या} स्थिति थी । यदि उसे पुट-आफ किया गया था तो कब और किस कारण से । 22-10-71 से ही वह पुट-आफ किया जा सकता था अतः 1-11-71 से सेवा से पृथक् करना न्यायतः ठीक नहीं है ।
- 9- सेवा से पृथक् करने का आदेश पिछली तारीख से पारित नहीं किया जा सकता ।



आत्मसमर्पण अवस्था

10- अपीलकर्ता के ऊपर 180 दिन से अधिक अनुपस्थित रहने का आरोप है जब कि उसे 1-11-71 अर्थात् 5-10-71 के बाद केवल 26 दिन बाद सेवा से पृथक् कर दिया गया है जो लगाये गये आरोप के सर्वथा प्रतिकूल है ।

अतः अवैध है ।

11- डाक अधीक्षक द्वारा पारित आदेश आरोपों के प्रतिकूल है तथा न्यायोचित नहीं है । अतः आदेश रद्द करने के योग्य है ।

प्रार्थना

अतः प्रार्थना है कि डाक-अधीक्षक सीतापुर के उपरोक्त आदेश को रद्द करके अपील कर्ता को पुनः सेवा करने का अवसर दिया जावे ।

दिनांक 22-6-1981.

अपीलकर्ता

ह0/- बाल कृष्ण अवस्थी
॥ बाल कृष्ण अवस्थी ॥
भूतपूर्व शाखा डाकपाल
बौनाभारी
जिला - सीतापुर

प्रतिलिपि डाक अधीक्षक सीतापुर आवश्यक कार्यवाही हेतु ।

दिनांक 22-6-1981.

ह0/- बाल कृष्ण अवस्थी
॥ बाल कृष्ण अवस्थी ॥

सत्य प्रतिलिपि

बालकृष्ण अवस्थी



26/5/83

In the Hon'ble High Court of Judicature At Allahabad ,
(Lucknow Bench) , Lucknow . A39
W.P. No. of 1983 .

Bal Krishna Awasthi aged about 42 years
S/O Kashi Ram , R/O Bouna Bhari, P.O. Bouna
Bhari P.S. Sidhauri, Distt. Sitapur . - - Petitioner .

Versus

Union of India and Others - - Opp. Parties.

Annexure 1

To,

The Director Postal Services
Lucknow Region
Lucknow.

Subject:- Appeal of Bal Krishna Awasthi, Ex.E.D.B.P.M
Bounabhari Distt. Sitapur.

Respected Sir,

I submitted the appeal dated 22.6.1981
against the punishment order issued by the SPs. Sitapur
vide his communication no A-65/E dt 11.5.81. After
waiting for your decision for a long time, I attended your
office in Oct 82 when I was informed that my appeal had
been decided and I would get the order from the SPs
Sitapur.

I waited for the order from the SPs .
Sitapur ^{but} ~~put~~ when appreciable time passed and I could not
get it, I went to his office repeatedly and requested him
to give me the order. On my repeated requests he got
annoyed and refused to give any order and told me that
I should get the order from the D.P.S., whom the appeal
was addressed.



आदेश प्राप्त नहीं

It is , therefore, requested that the decision taken on my appeal may kindly be communicated to me immediately at the following address. So as to reach me by the 14th instt , or else I will attend your office on the 14.2.1983 , when your decision may kindly be given to me personally.

As a long time has already passed and I have not been favoured with your decision on my appeal so far, it would be appreciated that the decision is communicated to me direct without any delay .

Dated Lucknow the

10.2.1983

Yours faithfully

(Bal Krishna Awasthi)

C/O Ravindra Kumar Dubey

4th Lane, Nawaiya

Ganeshganj

Lucknow.

आलक्ष्मी अग्रवाल



माननीय उच्च न्यायालय इलाहाबाद ॥ लखनऊ पीठिका ॥ लखनऊ ।

रिट पिटीशन नं०

वर्ष 1983.

बाल कृष्ण अवस्थी

----- पिटीशनर.

बनाम

यूनियन आफ इण्डिया एण्ड अदर्स

----- विपक्षीगण.

एनेक्ज़र नं०- 8

सेवा में,

श्रीमान डाक अधीक्षक,
सीतापुर ।

महोदय,

मैंने आपके आदेश संख्या ए-65/ई दिनांक 11-5-81 के विरुद्ध अपील दिनांक 22-6-1981 श्रीमान् डायरेक्टर पोस्टल सर्विसेज, लखनऊ रीजन, लखनऊ को की थी ।

मुझे उक्त डायरेक्टर के कार्यालय से ज्ञात हुआ कि मेरी अपील पर फैसला हो चुका है, जिसकी प्रतिलिपि मुझे अभी तक नहीं मिली है, जब कि मैं इस सम्बन्ध में कई बार आप के कार्यालय गया और अन्त में मुझसे यह कहा गया कि अपील पर लिए गये निर्णय के सम्बन्ध में आदेश डायरेक्टर के ही कार्यालय से मिलेगा ।

मैंने उसके बाद डायरेक्टर पोस्टल सर्विसेज को एक पत्र दिनांक 10-2-1982 को लिखा और उनके कार्यालय में दिनांक 14-2-82, 17-2-82 और 19-2-82 को गया । कार्यालय में दिनांक 18-2-83 को यह बताया गया कि आदेश उस कार्यालय से नहीं मिलेगा बल्कि आप ॥डाक-अधीक्षक॥ से मिलेगा ।

अतः नम्र निवेदन है कि मेरे अपील के सम्बन्ध में जो भी आदेश हों, उसे अति शीघ्र मुझे निम्न पते पर भेजने की कृपा करें । मैं कार्यालयों का चक्कर लगाते बहुत परेशान हो चुका हूँ ।

भवदीय,

ह०/-

॥ बाल कृष्ण अवस्थी ॥

भूतपूर्व इ.डी.वी.पी. यम, बौनाभारी

जिला- सीतापुर ।

दिनांक 19.3.83.

सत्य प्रतिलिपि

=====

बालकृष्ण अवस्थी

माननीय उच्च न्यायालय इलाहाबाद ॥ लखनऊ पीठिका ॥ लखनऊ ।

रिट पिटीशन नं०

वर्ष 1983.

बाल कृष्ण अवस्थी

----- पिटीशनर.

बनाम

यूनियन आफ इण्डिया एण्ड अदर्स.

----- विपक्षीगण.

एनेक्चर नं०- 9

कार्यालय निदेशक डाक सेवाएँ

लखनऊ क्षेत्र लखनऊ

यह श्री बालकृष्ण अवस्थी भूतपूर्व शाखा डाकपाल बौनाभार शाखा डाकघर, सीतापुर प्रखण्ड की अतिरिक्त विभागीय अभिकर्ता ॥आचार एवं सेवा॥ नियमों 1964 के नियम - 8॥2॥ के अन्तर्गत डाक अधीक्षक सीतापुर द्वारा जारी नौकरी से हटाए जाने के आदेश ज्ञापन संख्या ए-65/ई दिनांक सीतापुर 11-5-81 के विरुद्ध अपील दिनांक 22-6-81 का मामला है । श्री बालकृष्ण अवस्थी, अपीलकर्ता को डाक अधीक्षक सीतापुर ने अपने ज्ञापन सं० ए-65/ई दिनांक 3-1-80 के अन्तर्गत उक्त अपीलकर्ता को उसके द्वारा किए गए निम्न उल्लंघनों पर आरोपित किया था :-

1- श्री बालकृष्ण अवस्थी भूतपूर्व शाखा डाकपाल बौनाभारी दिनांक 16-11-71 से अनधिकृत रूप से बराबर अनुपस्थित रहे और इस प्रकार से उनकी अनुपस्थिति 180 दिन से अधिक पाई गई । इस प्रकरण में उक्त अभिकर्ता ने अति० वि० अभिकर्ता ॥आचार एवं सेवा॥ नियमावली 1964 के नियम 5॥5॥ का उल्लंघन किया ।

2- श्री बालकृष्ण अवस्थी, अपीलकर्ता ने अपनी गिरफ्तारी की सूचना को जानबूझ कर छिपाया तथा बीमारी का कारण दिखाकर बकाश के लिए प्रार्थना-पत्र दिया । इस प्रकार उन्होंने अति० वि० अभिकर्ता ॥आचरण एवं सेवा॥ नियमावली 1964 के नियम - 17 के अन्तर्गत निष्ठाहीन कार्य किया ।

उपर्युक्त आरोपों की डाक अधीक्षक सीतापुर जो कि उक्त अपीलकर्ता के सक्षम अनुशासनिक अधिकारी हैं ने अपनी ज्ञापन संख्या ए-65/ई दिनांक 8-2-80 के अन्तर्गत एक जांच अधिकारी नियुक्त करके स्वतंत्र रूप से मौखिक जांच सम्पन्न करवाई । उक्त मौखिक जांच में आरोपित मुद्दे सिद्ध पाए गए । फलतः जांच निष्कर्ष से सहमत होने पर अनुशासनिक अधिकारी ने अपीलकर्ता की सेवाएँ समाप्त किए जाने के आदेश जारी किए ।

आवेदक अवस्थी

अपीलकर्ता ने अपनी अपील दिनांक 22-6-81 में अपने उपर्युक्त आरोपों के स्पष्टीकरण में यह दलील प्रस्तुत की है कि चूंकि अपीलकर्ता को 21-10-71 को यह आभास मिला था कि उसे एक हत्या मर्डर के केस में फंसाया गया है और इस मामले की जानकारी लेने जब वह 22-10-71 को न्यायालय में गया तो वहाँ से उसे जेल भेज दिया गया और करीब 13 माह बाद उसकी जमानत हुई और अन्त में अपील करने पर उसे हाईकोर्ट के निर्णय दिनांक 20-7-78 के द्वारा अभियोग से मुक्त किया गया तब वह इस स्थिति में आया कि विभाग को औपचारिक सूचना दे । वास्तव में वस्तुस्थिति यह है कि अपीलकर्ता ने कथित रुग्णावस्था के आधार पर 30-10-71 को 1-11-71 से 15-11-71 तक के अवकाश के लिए प्रार्थनापत्र प्रेषित करके चुप बैठ गए । अपीलकर्ता ने अपनी अपील में यह तथ्य स्वयं स्वीकार किया है कि वे उक्त कत्ल के केस में 21-10-71 को न्यायालय में जब पुलिस केस की जानकारी के लिए गया तो उसकी गिरफ्तारी हुई । प्रत्यक्षतया यह बात अपने में ही स्पष्ट है कि अपीलकर्ता को 31-10-71 से पूर्व यह ज्ञान था कि उसके विरुद्ध कोई हत्या केस का मामला है जिसके निमित्त उसे न्यायालय में आत्मसमर्पण करके जमानत-व्यवस्था आदि कराना है । इस प्रकार से अपीलकर्ता ने अपने प्रार्थनापत्र दिनांक 31-10-71 में तथ्यों को दाबकर छुट्टी पर जाने का बहाना बनाया ।

दूसरे अपीलकर्ता के पास मामले की विभाग को औपचारिक सूचना देने का पर्याप्त समय था जब कि वह जमानत कराने के बाद अपने केस की पैरवी जिला जज के यहाँ कर रहे थे तथा जहाँ से उन्हें सजा भी सुनाई गई थी । इस अवधि में अपीलकर्ता के समक्ष कोई ऐसी बाधा नहीं थी जो उनके नियंत्रण के बाहर हो परन्तु ऐसा न कर अपीलकर्ता ने पूरे मामले को हाई कोर्ट द्वारा निर्णय होने तक दाब रखा जो कि उनके अतिरिक्त विभागीय अभिकर्ता के नाते उनके नैतिक क्रिया कलापों के परिपेक्ष्य में एक निष्ठाहीन कार्य सिद्ध होता है । यही नहीं इससे पूर्व भी जब अपीलकर्ता गिरफ्तारी के बाद अपने जेल-आवास में तब भी यदि अपीलकर्ता चाहते तो विभाग को जेल अधिकारियों के माध्यम से अपने मामले की सूचना भेजवा सकते थे या फिर अपने परिवार के सदस्यों के द्वारा जो अपीलकर्ता की जमानत व्यवस्था कर रहे होंगे के माध्यम से औपचारिक सूचना भेजवा सकते थे । परन्तु उन्होंने ऐसा न कर अपनी उक्त स्थिति को जानबूझ कर छिपाए रखा जो उनके निष्ठाहीन कार्य का द्योतक है ।

वास्तविक अवस्था

मैंने अपीलकर्ता के मामले से सम्बन्धित सभी अभिलेखों, जाँच प्रतिवेदन तथा उससे जुड़े कागजातों को सावधानी पूर्वक देख लिया है और इस निष्कर्ष पर पहुँचता हूँ कि अपीलकर्ता वास्तव में 180 दिन से अधिक अनधिकृत रूप से अनुपस्थित रहा तथा अपने से सम्बन्धित ज़ौजदारी मामले का सम्यक ज्ञान विभाग की जानकारी में लाने से दाबा जो उनके नैतिक उत्तरदायित्व के विरुद्ध पाया गया।

इस प्रकार से श्री बालकृष्ण अवस्थी, भूतपूर्व शाखा डाकपाल बौनाभारी सीतापुर की अपील दिनांक 22-6-81 तथ्यहीन एवं तर्कहीन है तथा इसमें कोई बल नहीं है। अतः अपील निरस्त की जाती है।

ह0/- अपठित

॥ शारदा प्रसाद ओझा ॥

निदेशक डाक सेवाएँ

लखनऊ क्षेत्र लखनऊ

संख्या :- आर0डी0एल0/ई0डी0ए0/ए-14/81/2 दिनांक 11-11-81
16

प्रतिलिपि :-

- 1॥ श्री बालकृष्ण अवस्थी भूतपूर्व शाखा डाकपाल बौनाभारी, सीतापुर।
- 2॥ डाक अधीक्षक सीतापुर की पत्रावली ए-65/ई के सन्दर्भ में अपीलकर्ता की प्रति के साथ इस आशय से प्रेषित कि वे अपीलकर्ता की प्रति उसे वितरित करवाकर उसकी प्राप्ति अभिस्वीकृत इस कार्यालय को प्रेषित करें।

ह0/- अपठित

डायरेक्टर पोस्टल सर्विसेज

लखनऊ रीजन, लखनऊ - 226001

सत्य प्रतिलिपि

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बालकृष्ण अवस्थी



A45 32/209

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

(Lucknow Bench) , Lucknow .



W.P. No. of 1983 .

1983
AFFIDAVIT
6
HIGH COURT
ALLAHABAD

Bal Krishna Awasthi

Petitioner

Versus

Union of India and Others

Opp. Parties .

Affidavit

I Bal Krishna Awasthi aged about 42 years S/O

Kashi Ram R/O Village and P.O. Bauna Bhari P.S. Sidhauri
Distt Sitapur do hereby state on oath as under ; -

1. That the deponent is the petitioner in the above noted writ petition and he is fully conversant with the facts of the case .
2. That the contents of paras 1 to 19 of the writ petition are true to his knowledge.
3. That the true copies of the Annexures to the writ petition have been compared by the deponent with their originals and they are found to be correct.

Lucknow

the 15.7.1983

Bal Krishna Awasthi
Deponent

Verification

I the above named deponent do hereby verify that the contents of para 1 to 3 of this affidavit are true to my knowledge . Nothing material has been suppressed and no part of it is false. So help me God.

Lucknow

the 18.7.1983

Bal Krishna Awasthi
Deponent

I identify the deponent who has signed before me .

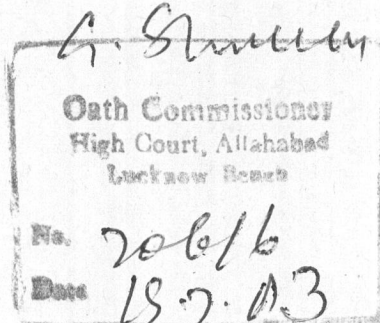
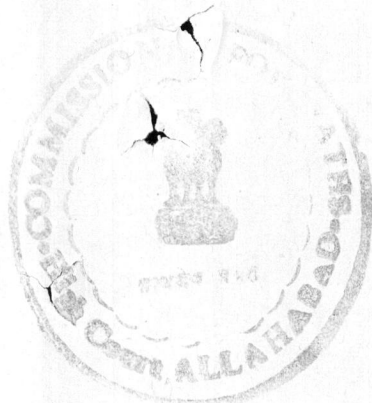
(M. Dubey)

Advocate

Solemnly affirmed before me ~~by~~ on this 19th day of July , 1983 at 4.30 Am/Pm ~~by~~ ^{by Sri B.K. Prasthi deponent} who is identified by

Sri M. Dubey ~~aforsaid~~ advocate High Court, Lucknow Bench, Lucknow .

I ^{am} have satisfied my self by examining the deponent that he understands the contents of this affidavit which has been read over and explained to him .



A47

ब अदालत श्रीमान

Hon'ble High Court of Judicature at
Allahabad, Muzam Bench, Lucknow

महोदय

वादी (मुद्दई)

प्रतिवादी (मुद्दाबलेह)

का

वकालतनामा



Bal Krishna Awasthi

वादी (मुद्दई)

बनाम

Union of India & others

प्रतिवादी (मुद्दाबलेह)

नं० मुकदमा सन् १९ पेशी की ता० १९ ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री B. Solomon Adv.

& M. Duley Adv. एडवोकेट

महोदय

वकील—

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 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 मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी [फरीकसानी] का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त [दस्तखती] रसीद से लेवें या पंच नियुक्त करें — वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे ।

हस्ताक्षर बाल कृष्ण अवस्थी

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

19

महीना

7

१९८३ ई०

Accepted
B. Solomon
Adv.
M. Duley
Adv.

A-48

 $\frac{3}{1}$

of 1983

Sp. B. Selom and N. Dubej

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
	<p><i>to whom an order is made</i></p>	
	<p><i>to whom an order is made</i></p>	
	<p><i>to whom an order is made</i></p>	
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH: ALLAHABAD.

.....

CIVIL MISC. APPLICATION NO. _____/OF 1987

On behalf of

The Union of India Applicant-
Respondents

IN

REGISTRATION NO. 1170 of 1987/ (C)

Bal Krishna Awasthi Applicant

Versus

The Union of India & others... Respondents

To

The Hon'ble the Vice-Chairman
and his other companion Members of the
Hon'ble Tribunal.

The humble application of
applicant-respondents Most Respectfully Sheweth
as under:-

1. That the aforesaid Writ Petition
was filed in the High Court and before the

Kupon
record.

11/7

62

-2-

counter-affidavit could be filed, the aforesaid petition was stand transferred to this Hon'ble Tribunal on the enactment of Administrative Tribunal Act, 1985.

2. That the full facts and reasons have been stated in the accompanying counter-affidavit.

3. That it is expedient in the interest of justice to dismiss the petition of the petitioner abovenamed with costs.

: P R A Y E R :

It is, therefore, Most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to admit this application and dismiss the petition filed by the petitioner with costs.

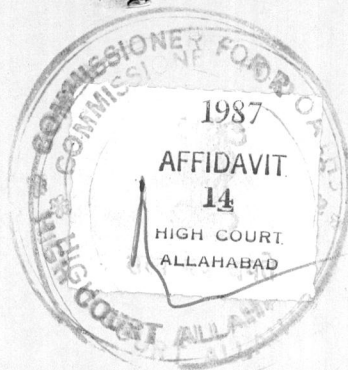
And /or further be pleased to pass such other and further orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.


(K. C. Sinha)

Counsel for respondents.

Addl. Standing Counsel, Central Govt

Dt/- 10.4.88 /



A52

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Additional Bench - Allahabad.

.....

Counter - Affidavit

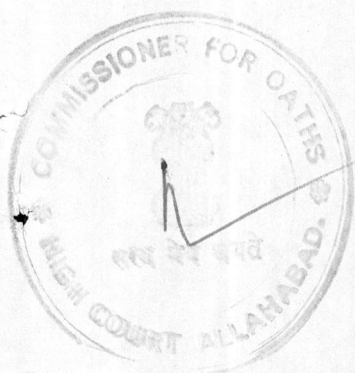
IN

Registration No. _____ of 1987/

Bal Krishna AwasthiPetitioner

Versus

Union of India & others..... Respondents.



Affidavit of J. M. SINHA

aged about 51 years son of

S. J. S. Lal posted

as Supdt. Post. Office Sitalpur

(Deponent)

I, the deponent abovenamed do hereby
solemnly affirm and state on oath as under:-

1. That the deponent is posted
as Singal Post Office, Sitalpur and has read over
the contents of the petition filed by the
petitioner and is in a position to reply the
same.

2. That before giving a parawise reply

A53

-2-

the following facts are being asserted in order to facilitate this Hon'ble Tribunal in administering justice.

3. The petitioner was appointed as EDBPM Baunabhari vide memo dated 20-2-69. He proceeded on leave on the ground of illness for the period 5-10-71 to 7-10-71, 8-10-71 to 20-10-71 and 21-10-71 to 31-10-71 vide his applications dated 5-10-71, 8-10-71 and 21-10-71 by handing over charge to Sri Mishri Lal on his responsibility. Further an application dated 30-10-71, was received from him for extension of leave for the period 1-11-71 to 15-11-71 on same ground. He remained absent without any application in the above continuation for the period more than 180 days. Meanwhile, the petitioner being involved in a murder case was sent to jail on 22-10-71 i.e. the date when the petitioner surrendered himself in the court, but he did not disclose the fact of his imprisonment in the knowledge of his immediate superiors and remained mum till 12.5.78 and applied taking back to duty vide his application dt. 5-12-78 i.e. after final disposal of criminal appeal no. 2611 of 1972 by the High Court on 10-7-1978 by setting aside the conviction and the sentence



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A54

-3-

awarded by Sri J.P.Mittal Civil and Sessions Judge, Sitapur in Sessions Trial no.117 of 197 2 decided on 26-8-72. The appeallant was chargesheeted vide this office memo dated 3.1.80. The petitioner submitted his defence on 14.1. 80. Sri S.L. Misra IPOs.(s), Sitapur was appointed as I.O. to conduct enquiry on pattern rule 14 of CCS(CCA) Rules, 1964 vide memo dated 8-2-80. Sri Yamuna Singh IPOs(C) Sitapur worked as PO and Sri Munni Dubey worked as defence A sstt. in this case. Inquiry Officer submitted enquiry report vide memo dated 16-3-81. After going through the case records, documents and enquiry report of Inquiry Officer, the orders of removal from service to Sri Bal Krishna Awasthi (Petitioner) Ex.EDBPM Bhaunabhari w.e.f. 1.11.71 the date from which he remained absent from duty,



A54

-3-

awarded by Sri J.P.Mittal Civil and Sessions Judge, Sitapur in Sessions Trial no.117 of 1972 decided on 26-8-72. The appellatant was chargesheeted vide this office memo dated 3.1.80. The petitioner submitted his defence on 14.1.80. Sri S.L. Misra I.P.O.s.(s), Sitapur was appointed as I.O. to conduct enquiry on pattern rule 14 of CCS(CCA) Rules, 1964 vide memo dated 8-2-80. Sri Yamuna Singh I.P.O.s(C) Sitapur worked as P.O. and Sri Munni Dubey worked as defence A sstt. in this case. Inquiry Officer submitted enquiry report vide memo dated 16-3-81. After going through the case records, documents and enquiry report of Inquiry Officer, the orders of removal from service to Sri Bal Krishna Awasthi (Petitioner) Ex.EDBPM Bhaunabhari w.e.f. 1.11.71 the date from which he remained absent from duty, was passed by the SSPOs, Sitapur which was communicated to him on 11.5.81, therefore, the petitioner filed the instant petition in the Hon'ble High Court. The petitioner filed an appeal dated 22.6.81 against the punishment of termination from service passed by the SPOs, Sitapur vide memo dated 11.5.81. The petitioner's appeal was found baseless by the appellate authority as such, the appeal was rejected by the appellate authority on ~~11/16.11.81~~ 11/16.11.81.



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-4-

4. That the contents of para-1 of the petition are not disputed except date of appointment is 24.2.1969 instead of 20-2-69 as stated by the petitioner.

5. That the contents of para-2 of the petition are admitted as such that the petitioner submitted three applications dated 5-10-71, 8-10-71 and 21-10-71 for leave for the period 5-10-71 to 7-10-71, 8-10-71 to 20-10-71 and 21-10-71 to 31-10-71 respectively. The petitioner was involved in a criminal case and he surrendered himself in the court on 20-10-71 and was sent to jail on the same date. It is incorrect to say that he was sent to jail on 22-10-81.



6. That the contents of para-3 of the petition are admitted as such that the petitioner on appeal was finally acquitted by the Hon'ble High Court, Allahabad by court order dated 10-7-78 instead of order dated 10-7-75 as stated in the petition.

7. That the contents of para-4 of the petition are not disputed.

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-5-

8. That the contents of para-5 of the petition are not correct as stated, hence emphatically denied.

9. That the contents of para-6 of the petition are not admitted as stated, in the circumstances mentioned in this para of petition there was no reason or occasion to apply for leave after 31.10.71 and to inform the department about the petitioner having been sent to the jail. The petitioner was in a position to apply for leave and inform the department about his involvement into the murder case and his imprisonment etc. The enquiry report dated 16 -3-81 may be discussed at the time of final hearing.

10. That the contents of para-7 of the petition are not admitted except this that petitioner's services were terminated w.e.f. 1.11.71 by opposite party no.3 vide his order dated 11.5.81 in compliance to the Posts and Telegraphs Extra Departmental Agents (Conduct and services) rules, 1964.

11. That in reply to the contents



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-6-

of para-8, it is submitted the submission of appeal to the Director Postal Services, Lucknow Region, Lucknow by the petitioner on 22-6-81 is admitted. The services of the petitioner were terminated in accordance with rules and procedure. The lapses pointed out on the part of respondent no.3 are denied.



12. That the contents of para-9 of the petition are denied. It is further submitted that the appeal was decided on 11/16.11.81 which was received on 19-11-81 and sent to Dak Nirikshak Central, Sitapur for delivery to the appellant vide his letter dated 20-11-81 which could be delivered to the petitioner only on 5.4.83 owing to his non-availability on the dates of visit to his village by Overseer of the area.

13. That the contents of para.10,11 and 12 of the petition are admitted.

14. That in reply to the contents of para-13 of the petition, it is submitted that it is a fact that it was held by the Inquiry Officer that making an application for leave for the period 1.11.71 to 15.11.71 on

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-7-

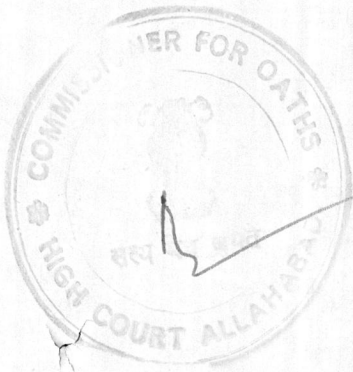
30-10-71 by the petitioner was not proved due to the death of prosecution witnesses.

15. That the contents of para-14 of the petition are denied. It is further submitted that respondent no.2 had applied his mind to the whole case and thereafter communicated his orders vide memo dated 11/16.11.81.

16. That the contents of para-15 of the petition are not correct as stated, hence emphatically denied. It is further submitted that the petitioner was in a position to apply for leave when he was in jail through his pairokass who had arranged for his bail etc.

17. That the contents of para-16 of the petition are not admitted.

18. That the contents of para-17 are not correct as stated, hence denied. It is further submitted that the services of the petitioner were terminated by respondent no.3 on the charges other than those for which his trial was done into the court. The services of the petitioner were terminated in compliance to the relevant rules. He is not entitled to any claim.



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A-59

19. That the contents of para-18 of the petition are not correct as stated, hence emphatically denied. It is further submitted that the disciplinary action instituted against the petitioner and orders passed in this regard are according to the posts and Telegraphs Extra Departmental Agents (Conduct and Services)Rules,1964.

20. That the contents of paras-19(a) to 19(d) are not admitted.

21. That the contents of para-19(e) of the petition are not correct as stated, hence emphatically denied. It is further submitted that the allegations are denied.

22. That the contents of para-19(f) of the petition are not correct as stated, hence denied. It is a fact that it was held by the Inquiry Officer that making an application for leave for the period 1.11.71 to 15.11.71 and 30-10-71 by the petitioner was not proved due to the death of prosecution witness.

23. That the contents of para-19(g & H) are not correct as stated, hence emphatically denied.



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A-80

-9-

24. That the contents of para-19(i) of the petition are not admitted. It is submitted that the petitioner was able to apply for leave.

25. That the contents of para-19(j) of the petition are not admitted. It is submitted that the findings of respondent no.2 were immediately sent for delivery to the petitioner through Supdt. of Post Offices, Sitapur. The same could be delivered only on 5. 4.83 through the Overseer of the area owing to non.availability of petitioner on the date of visit to the petitioner's village prior to this date.

26. That the contents of para-19(k) and (l) of the petition are not admitted. It is submitted that the petitioner was in position to apply for leave.

27. That in view of what has been said above, the petition of the petitioner is liable to be dismissed with costs and he is not entitled for any relief.

I, the deponent abovenamed do



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A61

-10.

hereby verify that the contents of
paras 1 and 2 of this affidavit are true
to my personal knowledge; those of paras 3 to 29
are based on record; those
of paras h are based on legal
advice to which I believe to be true; that
no part of it is false and nothing material
has been concealed in it .

So help me God.

(Deponent) 24.7.87

I, D.S. Chaubey, Clerk to Shri K.C. Sinha,
Advocate, High Court, Allahabad do hereby declares
that the person making this affidavit and
alleging himself to be the same is known to
me from the papers.

Clerk

Solemnly affirmed before me
on this 24 th day of July, 1987 at 9.15 am/pm by
the deponent who has been identified by the
aforesaid Clerk.

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

OATH COMMISSIONER	
<u>24.7.87</u>	
OATH COMMISSIONER	
H. C. Sinha	
St. No. <u>14/14/75</u>	
Date <u>24.7.87</u>	

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

A62

CIRCUIT BENCH, LUCKNOW

In Re: 1170 of 1987(T)

Bal Krishna Awasthi

... Petitioner

Versus

Union of India and others

... Respondents.

Counter Affidavit on behalf of Opp. Parties.

I, J. M. Sinha, aged about 51 years, son of Shri J.S. Lal at present posted as Supdt. of Post Offices, ~~Sultanpur~~ ^{Sidpur} do hereby solemnly affirmed and state as under:

1. That the deponent is posted as Supdt. of Post offices, ~~Sultanpur~~ ^{Sidpur} and has read over the contents of the petition filed by the petitioner and is in a position to reply the same.

2. That before giving a parawise reply the following facts are being asserted in order to facilitate this Hon'ble Tribunal in adminstering justice.



A62

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

^{18/10}
In Re: 1170 of 1987(T)

Bal Krishna Awasthi ... Petitioner

Versus

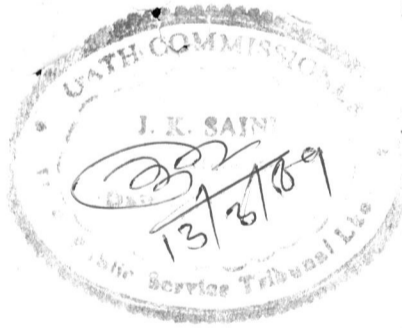
Union of India and others ... Respondents.

Counter Affidavit on behalf of Opp. Parties.

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13/3/89
I, J. M. Sinha, aged about 51 years, son of
Shri J.S. Lal at present posted as Supdt. of Post
Offices, ^{Sidhapur} ~~Sultanpur~~ do hereby solemnly affirmed and
state as under:

1. That the deponent is posted as Supdt. of
Post offices, ^{Sidhapur} ~~Sultanpur~~ and has read over the
contents of the petition filed by the petitioner
and is in a position to reply the same.

2. That before giving a parawise reply the
following facts are being asserted in order to
facilitate this Hon'ble Tribunal in adminstering
justice.



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A63

3. That the petitioner was appointed as EDSM
Baunabhari vide memo dated 20.2.69. He proceeded
on leave on the ground of illness for the period
5.10.71 to 7.10.71, 3.10.71 to 20.10.71, and
21.10.71 to 31.10.71 vide his applications dated
5.10.71, 8.10.71 and 21.10.71 by handing over charge
to Mishri Lal on his responsibility. Further an
application dated 30.10.71, was received from him for
extension of leave for the period 1.11.71 to 15.11.71
on same ground. He remained absent without any
application in the above continuation for the period
more than 180 days. Meanwhile, the petitioner being
involved in a murder case was sent to jail on 22.10.71
ie. the date when the petitioner surrendered himself
in the Court, but he did not disclose the fact of
his imprisonment in the knowledge of his immediate
superiors and remained ~~mu~~ until 12.5.78 and applied
taking back to duty vide his application dated 5.12.78
ie. after final disposal of criminal appeal no. 2611 of
1972 by the High Court on 10.7.1973 by setting aside the
conviction and the sentence awarded by Shri JP Mittal
Civil and Sessions Judge, Sitapur in Sessions Trial
No.117 of 1972 decided on 26.3.72. The appellat was
chargesheeted vide office memo dated 3.1.80. The



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petitioner submitted his defence on 14.1.80 .

Shri SK Misra IFOs (s) Sitapur was appointed as

IO to conduct enquiry on pattered rule 14 of CCS(CCA)

1964 vide memo dated 8.2.80. Shri Yemuna Singh IFOs(C)

Sitapur worked as IO and Sri Munni Dubey worked as defence

~~xxxx~~ Asstt. in this case. Inquiry officer submitted

enquiry report vide memo dated 16.3.81. After going

through the case records, documents and enquiry report

of Inquiry officer, the orders of removal from service

to Sri Bal Krishna Awasthi (petitioner) Ex. EDSPM

By aunabhari with effect from 1.11.71 the date from

which he remained absent from duty, was passed by the

SFOs, Sitapur which was communicated to him on 11.5.81,

therefore, the petitioner filed the instant petition in

the Hon'ble High Court. The petitioner filed an appeal

dated 22.6.81 against the punishment of termination from

service passed by the SFOs, Sitapur vide memo dated 11.5.81.

The petitioner's appeal was found baseless by the

appellate authority as such, the appeal was rejected by

the appellate authority on 11/16.11.81.

4. That the contents of para 1 of the petition are

not disputed except date of appointment is
21.2.1969 instead of 20.2.88 69 as stated by the
petitioner.

5. That the contents of para 2 of the petition
are admitted as such that the petitioner submitted
three applications dated 5.10.71, 8.10.71 and 21.10.71 for
leave for the period 5.10.71 to 7.10.71, 8.10.71 to
20.10.71 and 21.10.71 to 31.10.71 respectively. The
petitioner was involved in a criminal case and he
surrendered himself in the Court on 20.10.71 and was
sent to Jail on the same date. It is incorrect to
say that he was sent to Jail on 22.10.81.

6. That the contents of para 3 of the
petition are admitted as such that the petitioner
on appeal was finally acquitted by the Hon'ble
High Court, Allahabad by court order dated 10.7.78
instead of order dated 10.7.75 as stated in the
petition.

7. That the contents of para 4 of the petition are not
disputed.

8. That the contents of para 5 of the petition
are not correct as stated, hence emphatically denied.

13/3/89

[Signature]

9. That the contents of para 6 of the petition are not admitted as stated, in the circumstances mentioned in this para of petition there was no reason or occasion to apply for leave after 31.10.71 and to inform the department about the petitioner having been sent to the Jail. The petitioner was in a position to apply for leave and inform the department about his involvement into the murder case and his imprisonment etc. The enquiry report dated 16.3.81 may be discussed at the time of final hearing.

10. That the contents of para 7 of the petition are not admitted except this that petitioner's services were terminated with effect from 1.11.71 by opposite party no.3 vide his order dated 11.5.81 in compliance to the posts and Telegraphs Extra Departmental Agents (Conduct and Services) Rules, 1964.

11. That in reply to the contents of para 8 of the petition, it is submitted that the submission of appeal to the Director Postal Services, Lucknow Region, Lucknow by the petitioner on 02.6.81 is admitted. The

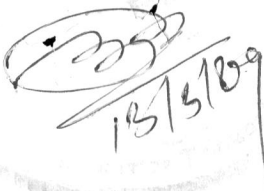


The services of the petitioner were terminated in accordance with rules and procedures. The lapses pointed out on the part of respondent no.2 are denied.


12. That the contents of para 9 of the petition are denied. It is further submitted that the appeal was decided on 11/16.11.81 which was received on 12.11.81 and sent to Dak Nirikshak Central, Sitapur for delivery to the appellant vide his letter dated 20.11.81 which could be delivered to the petitioner only on 8.4.83

owing to his non-availability on the dates of visit to his village by Overseer of the area.

13. That the contents of para 10 , 11 and 12 of the petition are admitted.

 13.14. That in reply to the contents of para 13 of the petition, it is submitted that it is a fact that it was held by the Inquiry officer that making an application for leave for the period 1.11.71 to 15.11.71 on 30.10.71 by the petitioner was not proved due to the death of prosecution witnesses.

15. That the contents of para 14 of the petition are denied. It is further submitted that respondent



no.2 had applied his mind to the whole case and therefefter communicated his order vide emo dated 11/16.11.81.

16. That the contents of para 15 of the petition are not correct as stated, hence emphatically denied. It is further submitted that the petitioner was in a position to apply for leave when he was in jail through his pairokars who had arranged for his bail etc.

17. That the contents of para 16 of the petition are not admitted.

18. That the contents of para 17 are not correct as stated, hence denied. It is further submitted that the services of the petitioner were terminated by respondent no.3 on the charges other than those for which his trial was done into the court. The services of the petitioner were terminated in complinace to the relevant rules. He is not entitled to any claim.

19. That the contents of para 18 of the petition are not correct as stated, hence emphatically denied. It is further submitted that the disciplinary action



(Signature)

instituted against the petitioner and orders passed in this regard are according to the posts and Telegraphs Extra Departmental Agents (Conduct and Services) Rules, 1964.

20. That the contents of para 19(a) to 19(d) are not admitted.

21. That the contents of para 19(b) of the petition are not correct as stated, hence emphatically denied. It is further submitted that the allegations are denied.

22. That the contents of para 19(f) of the petition are not correct as stated, hence denied. It is a fact that it was held by the Inquiry officer that making an application for leave for the period 1.11.71 to 15.11.71 and 30.10.71 by the petitioner was not proved due to the death of prosecution witness.

22. That the contents of para 19(g & h) are not correct as stated, hence emphatically denied.

24. That the contents of para 19(i) of the petition are not admitted. It is submitted that the petitioner was able to apply for leave.

25. That the contents of para 19(j) of the petition are not admitted. It is submitted that



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the findings of respondent no.2 were immediately sent for delivery to the petitioner through supdt. of Post Offices, Sitapur. The same could be delivered only on 5.4.83 through the Overseer of the area owing to non-availability of petitioner as the date of visit to the petitioner's village prior to this date.

26. That the contents of para 10(k) and (l) of the petition are not admitted. It is submitted that the petitioner was in position to apply for leave.

27. That in view of what has been said above, the petition of the petitioner is liable to be dismissed with costs and he is not entitled for any relief.


Deponent.

Lucknow,

Dated: 13.3.83

Verification.

I, the above deponent do hereby
verify that the contents of paras 1 to 2
of this affidavit are true to my personal
knowledge, those of paras 3 to 19
are based on record, those of para 20 to 22
are based on legal advice to which I believe to

be true; that no part of it is false and
nothing material has been concealed in it.


Deponent.

Lucknow,

Dated: 13/3/89

I identify the deponent who has
signed before me and is personally known
to me.



(VK CHAUDHARI)

Addl. Standing Counsel for Central Govt.
Lucknow.

Lucknow

Dated: 13/3/89

Solemnly affirmed before me on

this th day of March 1989 at am/pm

by the deponent who has been identified by the
aforesaid Advocate.

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

Oath Commissioner.



9.11.am

who is

Clerk

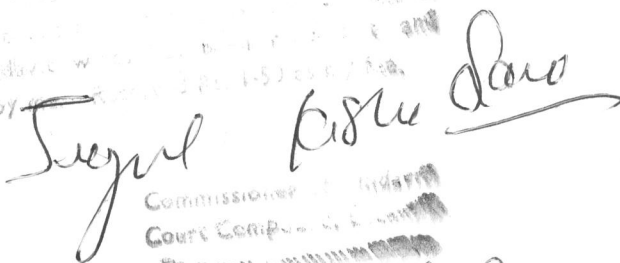
deponent

the affidavit was

signed by

J. M. Srinani
V/C Chaudhari





Commissioner of
Court Complex

13/3/89

In the Central Administrative Tribunal, Circuit
Lucknow.

T.A. No. 1170 of 1987 (T)

(Lucknow High Court W.P. No. 3742/83)

AT²

Bal Krishna Awasthi. Petitioner/Applicant.

Versus

Union of India & others.Opposite Parties/Respondents.

Rejoinder Affidavit

I, Bal Krishna Awasthi, aged about 48 years, son of Late Shri Kashi Ram, resident of Bauna Bhari, P.O. Bauna - Bhari, P.S. Sidhauri, District Sitapur do hereby state on oath as under:-

1. That the deponent is the petitioner/applicant in the above noted case and he is fully conversant with the facts deposed to in this rejoinder affidavit. The deponent has read the counter affidavit of the opposite parties/respondents, understood its contents and is replying to the same.
2. That in reply to the contents of para 1 of the counter, it is submitted that Shri J.M. Sinha, Superintendent of Post offices Sitapur, who has filed the counter affidavit has not furnished the authority for giving reply on behalf of the respondents no. 1 & 2.
3. That the contents of para 2 & 3 of the counter affidavit are denied as stated. The respondent no. 3 has tried to twist the matter in his own way to create confusion and prejudice. It is the case of

Filed today.

Pl. Keep on
Record.

25/4/89

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the deponent that he was appointed as E.D.BPM Bauna-
bhari vide memo dated 20.2.69 and he proceeded on
leave on medical ground w.e.f. 5.10.71 and applied
for leave engaging one Shri Misri Lal as his substitute
under the rules. The deponent submitted three
applications dated 5.10.71, 8.10.71 and 21.10.71
for leave from 5.10.71 to 7.10.71, 8.10.71 to 20.10.71
and 21.10.71 to 31.10.71 respectively. The deponent
did not submit any further application dated 30.10.71
as wrongly alleged. The deponent went to the Court
at Sitapur on 22.10.71 to dispel his apprehension of
being falsely involved in a murder case, where he was
arrested and sent to jail. The deponent's substitute
was already working on the post of E.D. BPM Bauna-
bhari P.O., there was no question of concealment of
the fact of arrest of the deponent on 22.10.71. The
deponent was granted bail after about 13 months and
was finally acquitted by the High Court Allahabad
by its order dated 10.7.1978. The deponent after
having been acquitted of the charge and released from
the jail, approached the respondent no. 3, and
requested him orally to handover the charge of the
Post Office to him (deponent), but he postponed the
matter on one plea or the other and on being requested
in writing, did not pass any order, but issued a charge
sheet dated 3.1.80 alleging two charges which were
denied by the deponent. Thereupon Inquiry Officer
was appointed to conduct enquiry. The Inquiry Officer
submitted his enquiry report dated 16.3.81 stating
that the charges were partly proved. The respondent
no. 3 on wrong assessment of the facts and circumst-
ances of the case passed prejudicial order dated 11.5.81
terminating the deponent's services w.e.f. 1.11.71.
The plea that the deponent remained absent from duty
is biased and wrong as the deponent had been imprisoned

अन्यथा न

3.

and his substitute had been working in his place. The deponent filed an appeal against the aforesaid order dated 11.5.81 to the respondent no. 2 by appeal dated 22.6.1981 which though alleged to have been rejected by the appellate authority on 11/16.11.81, the appellate order was delivered to the deponent through Postal Overseer on 5.4.1983, after about 17 months after the deponent had agitated the matter orally and in writing in the office of the respondents no. 2 & 3. It may be stated here that the respondent no. 3 who is the disciplinary authority has no authority to speak for and on behalf of the appellate authority, respondent no. 2. The counter furnished by the respondent no. 3 suggests that he influenced the respondent no. 2 in rejecting the appeal of the deponent.

4. That the contents of para 4 of the counter affidavit need no reply.
5. That in reply to the contents of para 5 of the counter, it is denied that the deponent surrendered himself in Court on 20.10.71 and was sent to jail on the same day. The deponent, as already stated, went to Sitapur on the apprehension that he was involved in some murder case and from there he was sent to jail on 22.10.71 and not on 20.10.71 as wrongly stated. The contents of para 2 of the application are re-stated.
6. That in reply to the contents of para 6 of the counter, it is not disputed that the deponent was finally acquitted by the Hon'ble High Court order dated 10.7.78, a true copy of operative portion of which is annexed with the application (writ petition) as Annexure 2.
7. That para 7 of the counter needs no reply.

also deponent

8. That the contents of para 8 of the counter are vague and hence denied and those of para 5 of the application (writ petition) are reiterated.
9. That the contents of para 9 of the counter are denied as misconceived and those of para 6 of the application (writ petition) are reasserted.
10. That the contents of para 10 of the counter are denied and those of para 7 of the petition are reiterated. It is pointed out that the deponent could not be terminated in terms, of rule 6 of the E D A (Conduct & Service) Rules 1964, and that no punitive order under Rule 7 ibid could be passed from retrospective effect viz. the order dated 11.5.81 could not validly remove the deponent from his post w.e.f. 1.11.71 which is arbitrary, malicious, illegal and void.
11. That the contents of para 11 of the counter, to the extent they are repugnant to the contents of para 8 of the petition are denied and the contents of para 8 of the petition are reiterated.
12. That the contents of para 12 of the counter are denied as stated. The opposite parties deliberately and intentionally delayed the matter in as much as the alleged appellate order dated 11/16.11.81 said to have

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contacting the respondents no. 2 personally but no reply was forthcoming from him.

13. That the contents of para 13 of the counter need no reply.
14. That the contents of para 14 of the counter are denied to the extent they are contrary to the contents of para 13 of the petition which are re-asserted. It may be stated that the Inquiry Officer categorically held that no application was submitted by the deponent for leave after 31.10.81.
15. That the contents of para 15 of the counter are denied and the contents of para 14 of the petition are re-asserted. It is pointed out that the respondent no.3 cannot hold any brief for the respondent no. 2 in the matter of consideration of appeal of the deponent.
16. That the contents of para 16 of the counter are denied and those of para 15 of the petition are re-asserted. There was no question of applying for leave for the period when the deponent was in jail which fact was well known to the respondent no. 3 through the substitute working in the place of the deponent and the inspecting officers who inspected the post office during the period almost every month. The fact of deponent's being sent to jail was not a secret and there was no concealment by the deponent.
17. That para 17 of the counter is vague and denied and the contents of para 16 of the petition are reiterated.
18. That the contents of para 18 of the counter are denied. No charge against the deponent was substantiated and

discontinued

there is no rule to terminate the services of the deponent. The deponent was in fact dismissed/removed from his post and this could not be done from ~~retrospect~~ retrospective effect. It is wrong to say that the deponent is not entitled to any claim. The deponent was not even put off from his duty and there was no reason for not putting him back to duty after his honourable acquittal by the High Court Allahabad. The deponent is entitled to be put back to his post after his acquittal by the High Court with all consequential benefits of pay and allowances as admissible from time to time from the day he was arrested viz. 22.10.71.

19. That the contents of para 19 of the counter are denied. The respondents have not cleared the relation between them and deponent at the time of initiating disciplinary proceeding against him and the relevant rule under which the disciplinary proceeding was taken and the rule under which the orders were passed. No order visiting penal consequences could be passed from retrospective effect. The punishment as well as the appellate orders are bad, mala fide, illegal and void. The contents of para 18 of the petition are re-asserted.
20. That the contents of paras 20 to 26 of the counter are denied and those of paras 19 and 19(a) to 19 (L) are re-iterated.
21. That the contents of para 27 of the counter are denied. In the facts and circumstances of the case, the deponent is entitled to the relief sought for by him and the prayer made by him in the petition is liable

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to be allowed.

Lucknow,

Dated: 11/4/1989.

महोदय
Deponent.

Verification

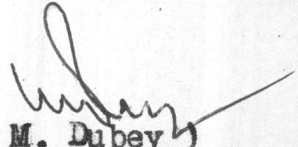
I, Bai Krishna Awasthi S/o Late Shri Kashi Ram age about 48 years Ex E.D. BPM Baunabhari, Distt. Sitapur, R/o village P.O. Baunabhari, Distt. Sitapur do hereby verify that the contents of paras 1 to 20 are true to my knowledge and para 21 believed to be true on legal advice and I have not suppressed any material fact.

Lucknow,

Dated: 11/4/1989.

महोदय
Deponent.

I identify the deponent who has signed before me.


(M. Dubey)
Advocate.

to be allowed.

Lucknow,

Dated: 11/4/1989.

मोह अंगी नमो
Deponent.

Verification

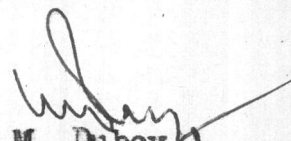
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Lucknow,

Dated: 11/4/1989.

मोह अंगी नमो
Deponent.

I identify the deponent who has signed before me.


(M. Dubey)
Advocate.