

Central Administrative Tribunal
Lucknow Bench

Cause Title C.A. 623/88 1993

Applicant H. P. Durrani Applicant.

Support of Post Office,

Respondents

Part A. B. C.

Sl. No.	Description of Documents.	Page
1.	Check List	A-1 & A-2 ✓
2.	Order sheet	A-3 to A-5 ✓
3.	Final Judgment	A-6 to A-11 ✓
4.	Petition Copy	A-12 to A-20 ✓
5.	Annexure	A-21 to A-32 ✓
6.	Power	A-33 ✓
7.	Counter Affidavit	A-34 to A-45 ✓
8.	Rejoinder Affidavit	A-46 to A-53 ✓

B- File. B-1 to B-41

C- File C-1 ✓

B/C destroyed on 09-5-12

Page

So (5)

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 623 of 1988

APPLICANT (s) Hanuman Prasad Dwivedi

RESPONDENT(s) D.P.S. Kanpur and another

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent ?
yes
2. (a) Is the application in the prescribed form ?
yes
(b) Is the application in paper book form ?
yes
(c) Have six complete sets of the application been filed ?
Four sets have been filed
3. (a) Is the appeal in time ?
yes
(b) If not, by how many days it is beyond time ?
—
(c) Has sufficient case for not making the application in time, been filed ?
—
4. Has the document of authorisation/Vakalat-nama been filed ?
yes
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-
yes
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?
yes
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?
yes
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?
attested by Shreehari

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space? *yes photostat-copy of the documents have been filed. One of the documents is hand written.*
8. Has the index of documents been filed and paging done properly? *→ yes*
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application? *yes*
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal? *No*
11. Are the application/duplicate copy/spare copies signed? *yes*
12. Are extra copies of the application with Annexures filed?
- (a) Identical with the original? *yes*
- (b) Defective? *No*
- (c) Wanting in Annexures *No*
- Nos...../Pages Nos.....?
13. Have file size envelopes bearing full addresses, of the respondents been filed? *No*
14. Are the given addresses, the registered addresses? *yes*
15. Do the names of the parties stated in the copies tally with those indicated in the application? *yes*
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true? *NA*
17. Are the facts of the case mentioned in item No. 6 of the application?
- (a) Concise? *No*
- (b) Under distinct heads? *No*
- (c) Numbered consecutively? *yes*
- (d) Typed in double space on one side of the paper? *yes*
18. Have the particulars for interim order prayed for indicated with reasons? *yes*
19. Whether all the remedies have been exhausted. *yes*

If approved by the
tested by R (J) 24.5.88
16/5/88
Makandrasingh

ORDER SHEET
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

(A3)

.....Ord No.....623.....of 1981

.....Vs.....

Sl.No. of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
	24.5.01	for order, see the order of the court on petition.	
	20.6.01	<u>ord</u> In A Motion for Vakalatnama & Counsel today, let the remainder be put by 27.7.01	
	27.7.01	<u>ord</u> Remainder may be put by 9.9.01	
	9.9.01	<u>ord</u> Remainder may be put by 2.12.01	
	2.12.01	<u>ord</u> Remainder has been put today. Let before court for hearing on 3.2.02	

3.2.02 No sitting Adjnt 28.4.02 for hearing.

for order

Central Administrative Tribunal
Lucknow Bench, Lucknow.

.....

ORDER SHEET

HP Mored v. Vol 2

O.A./T.A. No.

623/80

Date / Office Report

Order

en

SLN

SV

22/4/93

ORDER-SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

OA 623 of 88

S.No. of Order	Date Order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order.
		21-8-90 DR The case is ripe for hearing but as of the year 1988 adjourned sine die.	DR(J)
		24/12/91 The Case relates to territorial Jurisdiction of Lucknow Bench hence, is being transferred to Lucknow Bench while U.C.'s order dated 18-12-1991	S.O.(J)
		O.R. Submitted before Hon'ble Single member Court for necessary order's regarding transferring the case to C.A.T. LKO Bench.	

8/9/92

(A6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

O.A. NO 623 1988 (L)

~~T.A. NO~~ 199 (TL)

Date of Deceasion 23.2.23

H.P. Dwivedi

Petitioner.

Advocate for the
Petitioner(s)

V E R S U S

D.P.S. Kanyur & Co.

Respondent.

Advocate for the
Respondents

C O R A M

Hon'ble Mr. Justice U.C. Srivastava, J.C.

Hon'ble Mr. K. Chagga A.M.

1. Whether Reporter of local papers may be allowed to see the Judgment. ✓
2. To be referred to the reporter or not ? ✓
3. Whether their Lord Ships wish to see the fair copy of the Judgment ? ✓
4. Whether to be circulated to other benches ? ✓

Vice-Chairman / Member

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

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Original Application No: 623 of 1988

Hanuman Prasad Dwivedi Applicants.

Versus

D.P.S. Kanpur & others Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya. A.M.

The applicant entered the Department of Posts as an Extra Departmental Branch Post Master (EDBPM) in the district of Unnao. He was involved in a murder case and was awarded the punishment of Life Imprisonment by the Hon'ble Sessions Judge, against which the appeal was allowed by the High Court on 30th July 1976. The immediately applied for being taken back to duty but he was appointed as a substitute EDMP at Gangaghat in place of another person. Later on the applicant was permitted provisionally to appear in the recruitment Examination for the selection of postman conducted by the Post Master Kanpur. The prerequisite conditions for admitting an EDA to such an examination are that the EDA should not have attained the age of 42 years on the date of examination and that he should have completed 3 years of his service. In the instant case, the applicant was quite well within the prescribed age limit he is said to have not completed 3 years of his

AS

service in EDA's cadre, unless he was permitted to count his past service rendered prior to 27.9.71 or else, the period from 30.7.76 to 3.1.79 when the applicant remained out of Employment due to the Administrative Error was condoned by the DPS Kanpur to count for duty for the purpose of determining selection to regular posts. as The respondent No.1 sought clarification from the learned DPS Kanpur on this point vide his letter dated 25.4.84. The reply given by the learned DPS is not known to the applicant, but it is presumed it was not wholesome, because just thereafter, the learned Supdt. issued the impugned order vide order dated 28.3.85 through which he not only rejected to condone the period of unemployment into duty, but also he has rejected to count a period of actual duty rendered by the applicant from 4.1.79 to 7.2.80 as duty for the purpose of determining selection to the regular posts. as The applicant preferred an appeal against the same order and that too was rejected through a non-speaking order. The condonation having been refused the provisional permission to appear at the Recruitment examination is said to have become infructuous and as such the result of the recruitment examination was refused to be announced. Hence the applicant approached the Tribunal.

2. The respondents in their counter reply have pointed out that Sri Hanuman Prasad Dwivedi, petitioner was engaged as Extra Departmental Branch Post Master Majra Piper Khera in the month of April, 1968. Later on he was shifted to work as Extra Departmental Branch Post Master Ganga-
shah but convenient on 1/1/84

A 9

ghat but consequent on upgradation of Gangaghat Extra Departmental Branch Office, the said Hanuman Prasad Dwivedi was again reverted as Extra Departmental Branch Office, Majra Pipar Khera w.e.f. 26.2.1969. While working as EDBPM, the said Sri Hanuman Prasad Dwivedi remained on unauthorised absence from 12.6.1969 to 23.6.1969. The period was treated as break vide Inspector of Post Offices North Sub Division Memo dated 27.6.69. While working as EDBPM the said Sri Hanuman Prasad Dwivedi, applicant again absented himself with effect from 27.9.71 without any leave application or authorised leave. On enquiry, it was found that the applicant was arrested in a murder case. Consequently, he was put off on duty w.e.f. 27.9.1971. The applicant was sentenced to undergo imprisonment for life under Section 302/149, I.P.C. vide Sessions Judge Unnao Judgement dated 30.10.1972, but the official failed to perform his legitimate duty to inform this office with the fact of his Sentence awarded by Hon'ble Sessions Judge Unnao to enable this office for taking necessary action against him. Since the service of Extra Departmental employees are not transferable, the frequent changes from one place to another on the request of the official or otherwise will automatically be treated as break in service. Further the unauthorised absence even for a day constitutes a break in service of an Extra Departmental Agent unless regularised as authorised leave or condoned vide Director General, Post & Telegraph instructions No. 10 below ruled-4 of the Extra Departmental Agent Conduct and service Rules. As such the services rendered by said Sri Hunaman Prasad Dwivedi in any capacity upto 23.6.69, will not be continued

u

Counted & continued

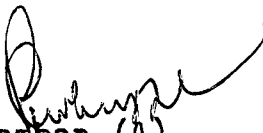
A-10

for any other purposes. Despite several unregistered reminders, no response from the learned Supdt, the applicant sent a Regd. Reminder on 20.3.78 and still another regd. reminder on 13.2.79. He was ultimately posted as EDBPM Gangaghat from 4.1.79 in the Temporary vacancy of Shri Munshi Lal as per orders of SDI (Posts) Unnao. According to the department, as no application for leave was received, therefore, there was no occasion for sanction or granting the leave. The contents of para No. 6(V) are not admitted by the petitioner. He was only appointed as Extra Departmental Mail Peon, Gangaghat w.e.f. February, 1980 as fresh candidate therefore the services of the applicant other than the services rendered as Extra Departmental Mail Peon, Gangaghat cannot be taken into account for any purpose including the purpose for computation of length of service for appearing in any departmental examination and or grant of ex-gratia gratuity and there is no illegality in the orders passed by Senior Supdt. Post Office Mufassal Division. Under the heading of relief it is submitted that the applicant is not entitled to any relief. Under the heading interim reliefs it is submitted that the applicant is not entitled to any interim reliefs during the pendency of this application. As such, the applicant does not come in merit and , therefore, he is not entitled for declaration of the result as prayed for. The applicant is devoid of merits and is liable to be rejected.

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The respondents, however, are directed to consider the case of the applicant again, and in case, the whenever, a fresh examination takes place, he may be allowed to appear in the examination or given the benefit of the earlier examination.

With these observations, the application stands disposed of finally with no order as to the cost.


Member (A)


Vice-Chairman.

Lucknow Dated: 23.2.93

(jlw)

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Application u/s 19 of Administrative Tribunal Act, 1985

Filed on 16-5-88

Regn. No. 623 of 1988

Signature of D.R.(J)

In The Central Administrative Tribunal, Allahabad-1

Between

Hanuman Prasad Dwivedi

Applicant

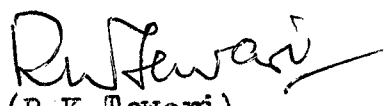
A N D

(1) Supdt. Posts 'M' Dn. Kanpur I
I
(2) D.P.S. Kanpur I

Respondents

I N D E X

Sl. No.	Annexure Marked	Particulars Of Documents	Page No.
1	-	Application	2to9
2	A I	No.A 4/EDA/Majra Piperkhara dt.26-10-79 from Resp.1 to App.	10
3	A II	Application dt.17-6-80 seeking permission to appear in the test	11
4	A III	Photo copies of Receipts of RLs	12
5	A IV	No.A 4/EDA/Majra Piperkhara dt.25-4-84 from Resp.1 to 2	13 to 14
6	A V	No. A-4/EDA/Majra Piperkhara dt.28-3-85 from Resp.No.1 (Impugned Order)	15 to 17
7	A VI	Appeal dated 17-4-85 to DPS	18 to 20
8	A VII	Appellate order dated 25-3-88	21


(R.K.Tewari)
Advocate
154, Purshottamnagar,
Allahabad-16

हनुमान प्रसाद द्विवेदी

13
Filed today.
Date of Admission
Noted for 24/5/88

Details of Application

1- Particulars of the Applicant :-

- (i) Name of the Applicant HANUMAN PRASAD DWIVEDI
- (ii) Father's Name Late Shri Raghubar Prasad Dwivedi
- (iii) Designation & EDMP Majra Piperkhera Dist. Unnao

Office in which employed Majra Piperkhera B.O. in Dist. Unnao

- (iv) Office Address - ditto -
- (v) Address for service Village & P.O. Banthar
- of all notices Dist. Unnao.

Control Administrative Tribunal
Additional Bench at Allahabad
Dist. of Allahabad 16-5-88

16-5-88
Date of receipt
by Post
By Registrar.

2- Particulars of the Respondents :-

- (i) Name &/Or Designation (1) Supdt. Posts "M" Division, Kanpur
- (ii) Official Address (2) D.P.S. Kanpur
- (iii) Address for service
- of all notices

3- Particulars of the order against which application is made :-

- (i) Order No. A4/EDA/Majra Piper Khera
- (ii) Date 28-3-85
- (iii) Passed by Supdt. Posts "M" Dn. Kanpur
- (iv) Subject in brief Refusal to condone period of non employment which had been due to Administrative Error.

at Pages 15 to 17

As also the
affiliated order of
Ann Adm on P 21.

4- Jurisdiction of the Tribunal

The applicant declares that the subject matter of the order against which he wants redressal is within the Jurisdiction of the Tribunal.

5- Limitation

The applicant further declares that the application is within the limitation prescribed in section 21 of the Administrative Tribunal Act, 1985.

6- Facts of the case

The facts of the case are given below :-

R. H. Dewan

हनुमान प्रसाद द्विवेदी

The applicant entered the Department of

the 30th of July,
applied for being

Rufwan Singh Badi
Advocate

ment due to the Administrative Error was condoned by the DPS Kanpur to count for duty for the purpose of determining selection to regular Posts as per DG P&T New Delhi letter No.47/5/79-SPB I dated 22-10/82 appearing as DG's Instruction No.4 below Rule 9 of EDA (Conduct & Service) Rules 1964. The Resp. No.1 sought clarification from the learned DPS Kanpur on this point vide his letter No.A 4/EDA/Majra Piperkhera dated 25-4-84 at Ann. A IV on Pages 13 & 14. The reply given by the learned DPS is not known to the applicant but it is presumed it was not wholesome. Because just thereafter the learned Supdt. (Resp. No.1) issued the impugned Order his Memo. No.A-4/EDA/Majra Piperkhera dated 28-3-85 (Ann. A V on Page 15 & 17) through which he not only rejected to condone the period of unemployment into duty, he has rejected to count a period of actual duty rendered by the applicant from 4-1-79 to 7-2-80 as duty for the purpose of determining selection to the Regular Posts. The applicant preferred an appeal against this order to the learned DPS Kanpur on 17-4-85 vide copy at Ann. A VI on pages 18 to 20. This appeal too was rejected by the learned DPS (Resp. No.2) through a non speaking order conveyed through the Resp. No.1 vide latter's Memo. No.A 4/EDA/Majra Piperkhera dated 25-3-88 at Ann. A VII on Page 21. The Condonation having been refused the provisional permission to appear at the Recruitment Examination is said to have become infructuous and as such the result of the Recruitment Exam. was refused to be announced. Hence the applicant is submitting this application.

- (ii) The applicant was acquitted of all charges by the Hon'ble the High Court Of Allahabad (Lucknow Bench) vide their order dated 30/7/1976. He submitted a copy of

Rutawan

उत्तराखण्ड सरकार

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- 5 -

said Judgement to the learned SUPDt. Posts 'M' dn. Kanpur (Resp. No.1) along with an application for being put back to duty. He submitted the said application to the learned Supdt. (Resp. No.1) on 9/10-11-76 under certificate of Posting. A photo-stet copy of the said Posting Certificate is appended herewith ^{as} ~~at~~ Ann. A III on page 12. Despite several unregistered reminders sent, finding no response from the learned supdt., the applicant sent a Regd Reminder on 20-3-78 and still another regd. reminder on 13-2-79. The photo-stet copies of the receipts of the regd. letters sent are appended herewith as Ann. A III on Page 12. He was ultimately posted as EDMP Gangaghat from 4-1-79 in the Temporary vacancy of Shri Munshi Lal as per orders of SDI(Posts) Unnao. Later on that very post fell clearly vacant and The Asstt. Supdt. Posts East Sub Dn. Unnao advertised vide his No. A/EDMP/Gangaghat dated 3/1/79 for recruiting a suitable candidate for that post. The applicant too submitted an application and interalia in consideration of his experience of the work he was appointed EDMP Gangaghat now against a clear vacancy w/e/~~18/2/80~~ (8-2-80). thus the applicant continued to work on the same post exactly in the same cadre and pay in continuation of his previous service.

- (iii) In the impugned order dated 28-3-85 at Ann. A V on pages 15 to 17 the learned Supdt. (Resp. No.1) has declined to count actual services rendered by by him as EDMP Gangaghat from 4-1-79 to 7-2-80 because he says "that besides the points discussed above the services of the official during the period of EDA services were never terminated consequent on

D. Tewari

हनुमान प्रसाद / ६०१

on want of vacancy due to either abolition of post or upgradation of the post office etc. During the said period also did not voluntarily resigned from one ED Post to take up the appointment in another ED Post with proper permission^{Shion}, but got the appointment as EDMP Gangaghat w.e.f. 8/2/80 as fresh candidate. As such the services of the said Shri Hanuman Pd. other than the services rendered as EDMP Gangaghat w.e.f. 8/2/80 can not be taken into A/W for any purpose including the purposes for computing length of service for appearing in any Departmental Examination/ or grant of ex-gratia gratuity."

The reasons offered by the learned Supdt. (Resp. No.1) for not counting the actual services rendered by him as EDMP Gangaghat from 4/1/79 to 7/2/80 are not at all clear. moreover he has not supported his contention by quoting any Departmental Rule/order. On the contrary there are specific instructions from the DG Posts to count such services for all purposes. Moreover in his letter dated 25-4-84 at Ann A IV on pages 13 & 14 addressed to the learned DPS Kanpur he has never raised this issue. Thus it is quite clear that it is an afterthought just to harm the applicant.

- (iv) The applicant had been put off duty on 27-9-71 in connection with a criminal case pending against him in a criminal court. The court below had awarded him the punishment for Life Imprisonment but the operation of that order was soon stayed by the learned High Court of Allahabad (Lucknow Bench) till the finalisation of his appeal. The appeal was fully allowed & the applicant was acquitted of all charges vide orders passed on 30/7/86. The applicant submitted a copy

R. Tewari

हुमना प्रसाद 13/4/87

of the said judgement to the learned Supdt on 9/10-11-86 along with an application for being put back to duty. The respondents acknowledge to have received this judgement sometimes in December 1978 as they offered the applicant a lower post of EDMF Ganga-ghat from 4-1-79 and the applicant ungrudgingly accepted the same because ~~in~~he was in great financial crisis. Under Departmental Rules it was a must on the part of the learned Supdt. (Resp. No.1) to have put back the applicant to his old post of BPM Majra Piperkhara which he failed to discharge. Had the learned Supdt. acting as per rule posted the applicant as EDBPM Majra Piperkhara ^{from} ~~from~~ 7-1-79 the present situation would never have arisen. The learned Supdt. just to ^{to} conceal his lapses has offered peculiar arguments to reject the services of the applicant for counting the same to assess his suitability for appearing at a departmental Exam.

- (v) In accordance with D.G. P&T New Delhi letter No.47/16/79 SPB I dated 22/12/79 appearing as DG's Instruction No.5 below Rule 9 of E.D.A.(Conduct and service Rules) 1964 the applicant was required to have put in a service of only two years and a half from 4/1/79 in order to have become eligible for the said Examination.

In any case he is fully entitled to have ~~been~~ been properly admitted to the said Recruitment Examination of Postman and therefore it is a must on the part of the respondents to cause declaration of the withheld result. It is , therefore prayed-

R. H. Dewan

हनुमान प्रसाद विरठ

A19

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7. Reliefs Sought for -

In view of the facts narrated in para 6 above the applicant prays for the following reliefs:-

- (i) The impugned order dated 28-3-88 at Ann. A V on pages 15 to 17 and the appellate order dated 21-3-88 at Ann. A VII ^{order} may both be set aside. They may be directed to get the result of the Examination announced by the learned P.M.Kanpur.
- (ii) In * case the applicant is declared successful he may atonce be appointed as a postman and his pay may be notionally fixed from the date ~~the~~ the applicant would have worked in the postman's cadre had his result not been withheld.
- (iii) He may be allowed the cost of this suit.

Interim Relief any prayed for-

The applicant prays that his result of the Examination may kindly be got announced immediately but he may be given appointment in the new

Cadre only after this application is finalised.

If this request is acceded to a lot of time & labour at all ends will be saved ^{became} in case the applicant is found to have failed in the Examination, In that case this application would become infrutuous.

R. Dewan

हुमना ३ मार्च १९८८

A-20

- 9 -

~~8- Interim order, if prayed for - NIL~~

9- Details of the remedies exhausted

The applicant declares that he has availed of all the remedies available to him under relevant service rules—
The applicant preferred an appeal on 17-4-85 to
DPS Kanpur vide Ann. A VI on pages 18 to 20 which was
rejected by him on 25-3-88 vide Ann. A VII on P 21

10- Matter not pending with any other court etc. :-

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law, or any other authority or any other bench of the Tribunal.

11- Particulars of the Postal Order in respect of the application fee :-

- (i) No. of I. P. O. DD4/227457
- (ii) Name of Issuing P. O. Allahabad H.P.O.
- (iii) Date 25-4-88
- (iv) P. O. at which payable Allahabad H. P. O.

12- Index- An Index of the documents to be relied upon is enclosed with each copy of this application

13- List of enclosures :-

- (i) Vakalatnama
- (ii) one I. P. O. for Rs. 50/-
- (iii) Seven documents to be relied upon

In Verification

I, Hanuman Pd. Dwivedi s/o Shri Raghubar Pd. Dwivedi aged 30
years R/O Vill. & P.O. Banthara Unnao and working as EDMP Majra
Piperkhara do hereby
verify that the contents from 1 to 13 are true to my personal knowledge & belief and that I have not
suppressed any material facts.

Place- Allahabad
Date 16/5/88

To
The Registrar, Central Administrative Tribunal,
Allahabad-211001

[Handwritten Signature]

Signature of applicant

[Handwritten Signature: R. K. Tewari]

R. K. TEWARI
Advocate
154, Purnottam Nagar
(Khuldaabad)
Allahabad-16

2014/01/14

Level

R. K. Tewari 12/5/88
(R. K. Tewari Adro.)

Annexure A II

A-22

जीमान जी अधीक्षक महोदय

मुम्बई राज्य हाउस कागज

द्वारा

अधिकांश गंगादाट, उन्नाव

मान्य महोदय

रिक्त में

जीमान जी आपके पत्र, A4/EDB मजरा पीपर रस्ता दिनांक 27 दिसम्बर, 79 के अनुसार प्रार्थी है जो आपके फाट्टीकरण मांग था वह फाट्टीकरण प्रार्थी को दिनांक 2 जनवरी, 80 को P.L. No. 219 द्वारा S.P.M. गंगादाट आपके कार्यालय को भेज दिया था, परन्तु लगभग 5 माह हो चुके प्रार्थी के प्रार्थना पत्र पर कुछ विचार नहीं किया गया तथा प्रार्थी को उन प्रार्थना पत्र के सम्बन्ध में कोई जानकारी नहीं दी गई।

प्रार्थी दिनांक 4 मार्च, 68 से S.P.M. मजरा पीपर रस्ता के पद पर 26 सितम्बर 71 तक कार्य किया तथा 4 जनवरी, 79 से गंगादाट से E.D.B. के पत्र पर कार्य कर रहा है।

अतः जीमान जी से प्रार्थना है अगली चतुर्थ अंजी की हो- वाली परीक्षा में प्रार्थी को परीक्षा में बैठने तथा परीक्षा देने की अनुमति प्रदान की।

आपकी महान् दया होगी।

17/6/80

TRUE COPY

R. K. Tewari Advo. 12/5/80

प्रार्थी: न. टुगान प्रसाद सिंह

ई. न. डी. गंगादाट

मु. पू. जी. पी. प्रा.

मजरा पीपर रस्ता

A25

-14-

उक्त मामले को न्या. करी. के लिए प्रेषित किया जा
रहा है।

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(R. K. Tewari Advo.)

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R. K. Tewari
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-15-
Annexure A V

A-28

INDIAN POSTS AND TELEGRAPHS DEPARTMENT
OFFICE OF SUPDT. OF POST OFFICES KANPUR(M) DN.

Memo No. A-4/EDA/Majra Piper Khera dt. at KP, 28.3.85
.....

This is a case of Shri Hanuman Pr. Dwivedi EDA Gangaghat PO, Distt Unnao regarding fixation of his past services and counting of absence/break as duty or otherwise.

The said Shri Hanuman Prasad Dwivedi R/O Vill. Banther Distt. Unnao was engaged EDBPM Majra Piper Khera in the month of April, 1968. Later he was shifted to work as EDBPM Gangaghat but consequent on upgradation of Gangaghat EDBO as Departmental SO, the said Shri Hanuman Prasad Dwivedi was again reverted as EDBPM Majra Piper Khera w.e.f. 26.2.69, while working as EDBPM Majra Piper Khera, the said Shri Hanuman Prasad Dwivedi remained unauthorised absence from 12.6.69 to 23.6.69. The period was treated as break vide IPOs. North Sub Dn. memo No. A/Majra dated 27.6.69. Since the services of ED employees are not transferable, the frequent charges from one place to other, the request of the official or otherwise will automatically be treated as break in service. Further the unauthorised absence even for a day constitutes a break in service of an EDA unless regularised as authorised leave or condoned vide DG P&T Instructions No. 10 below rule 4 of EDA conduct and service rules. As such the services rendered by said Shri Hanuman Prasad Dwivedi in any capacity upto 23.6.69, will not be counted for any purpose.

2. While working as EDBPM Majra Piper Khera the said Shri Hanuman Prasad Dwivedi, again absented himself w.e.f. 27.9.71 without any leave application or authorised leave. On enquiry it was found that the said Shri Hanuman Prasad was arrested in a murder case. Consequently he was placed put off duty w.e.f. 27.9.71 vide IPOs. North Sub Dn. Kanpur memo No. A/Majra Piper Khera dated 15.10.71 which was confirmed vide Sr. Supdt. of Post Offices Kanpur Dn. memo No. A-4/Majra Piper Khera dated 5.11.71. In the murder case the said Shri Hanuman Prasad was sentenced to undergo imprisonment for life under section 302/149 IPC etc. vide Session Judge Unnao judgement dated 30.10.72

Contd....2

R. Kumar

but the official failed to perform his legitimate duty to inform this office with the fact of his sentence awarded by Honourable Session Judge Unnao, to enable this office for taking necessary action against him. As such the action under rule 6 or 8 or 8 A as applicable of EDA conduct and service rules could not be taken by this office and the official continued as put off duty. Though no order of termination of services of official are available in the file, but the services of the official stood terminated automatically w.e.f. 30.10.72 i.e. the date of judgement for the sentence of life imprisonment. Since the EDAs. do not hold any lien on ~~person~~ any post, there is provision in the rules to keep the post vacant for such officials till their cases are decided in appeals. Moreover the official apprised this office with the fact that he was acquitted appeal by the H, Hie High Court of Allahabad bench, Lucknow on 14.11.79, when the copy of judgement was received by this ~~office~~ office vide SPM Gangaghat letter no.150 dated 12.11.79. This office was in a position to take action against the official under relevant rule 6, 8 or 8 A of EDA conduct and service rules, or put him on duty after going due considerations to all facts, after 12.11.79 only. Taking into the bright side of the official into account, had ~~the~~ the official been fully exonerated and reinstated on duty, the period during which the said Shri Hanuman Pd. was not in service or remained put off duty would have not been taken into account for completing his length of service vide DG M&T instructions No.11 below rule 4 or EDA conduct and service rules.

3. Meanwhile the said Shri Hanuman Pd. was engaged as EDMP Gangaghat w.e.f. 4th. Jan, 1979 in place of Shri Munshi Lal. Further more in response to ASPOs. East Sub Dn. Unnao advertisement No.A/EDMP/Gangaghat dated 3.10.79, the said Shri Hanuman Pd. applied for the post of EDMP Gangaghat without furnishing any detail of previous service/conduct. Consequent the said Shri Hanuman Pd. was appointed as EDMP vide ASPOs. Unnao memo no.A/EDMP/Gangaghat dated 8.2.80 and since then working as EDMP Gangaghat(Unnao).

4. I have gone through the case of the said Shri Hanuman Pd. EDMP Gangaghat thoroughly in consultation with all the files including the files of ASPOs. Unnao relating to him and rules contained in the ED conduct

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and service rules and to the conclusion that besides the points discussed above the services of the official during the period from 28.6.59 were never terminated consequent on want of vacancy due to either of abolition of post or upgradation of the post office etc. During the said period also did not voluntarily resigned from one ED post to take up the appointment in another ED post with proper permission, but got the appointment as EDMP Gangaghat w.e.f. 8.2.80 as fresh candidate. As such the services of the said Shri Hanuman Prasad, other than the services rendered as EDMP Gangaghat w.e.f. 8.2.80 cannot be taken into account for any purpose including the purposes for computation of length of service for appearing in any Departmental examination and/or grant of ex-gratia gratuity.

Hence it is decided that the services of the said Shri Hanuman Prasad as ED employee will only be taken into account w.e.f. 08.2.80 for all purposes including the computation of length of service for eligibility in appearing in any Departmental examination and/or grant of ex-gratia gratuity pending case, if any, for which final decisions have not been taken, will be decided in accordance with orders, as above. Previous decisions/orders in this regard, maximum in any stand notified accordingly.

19.2.2016
Superintendent of Police, Kanpur
Kanpur District Division.

Copy to:-

1. Shri Hanuman Prasad Dwivedi, IDDA Gangaghat
IC, Unnao District, Shri Gangaghat (Unnao)
2. A.S.P.O., Sub Do. Unnao.
3. P.M. Kanpur.
4. D.P. Kanpur Region Kanpur.

TRUE COPY

R. K. Tewari
(R. K. Tewari Advo.)

16

-10-
Annexure A VI
The Director Postal Services,
Kanpur Region,
Kanpur-208001.

A-29

Subject: Representation against the orders of the SPOs Kanpur (Mufessil) contained in memo. No. A.4/EDA/Majra Pipar Khera dated 28.3.85.

Sir,

With profound regard the representationist has to represent against the aforesaid orders with the following facts:-

1. That he had been working as BPM Majra Pipar Khera from 14.4.68, having been appointed formally on that post. But subsequently he was engaged to work as BPM Ganga-ghat where he had worked till the upgradation of the latter B.O. into a departmental S.O. On upgradation of the latter B.O. he had turned up again on his original post and acted as BPM Majra Pipar Khera.

2. During the course of his performance as B.P.M. Majra Pipar Khera, he was involved in a non departmental criminal case and was sentenced to rigorous sentence of 20 years by the Session Court, but that punishment, subsequently had been turned down by the High Court, Allahabad and he was acquitted of the charge raised by the first trial court. A copy of the judgement of the Appellate court was submitted to the SPOs Kanpur (M) on 9.11.76 with an application requesting therein for his reinstatement in the service and for finalising the departmental action but nothing could be done, despite a number of reminders as mentioned below:

Dated 15.2.77 despatched under Ganga-ghat RL No. 518
Dated 20.3.78 " " " " RL No. 1594.

3. Owing to facing criminal offences in the Court and heavy expences in the court cases, he had been financially handicapped as such he had applied for the post of the EDDA Ganga-ghat to earn his livelihood and was appointed as EDDA there. Since then he found himself in a position to feed his small children atleast one time a day. He had applied for the examination held in July '83 and had passed it successfully as per official communication from the SPOs Kanpur (M) vide his letter No. A.4/EDA/Majra Pipar Khera dated 25.4.84 addressed to your office with copy to this office. But the result could not be declared so far and he being a successful candidate, is being deprived of promotional benefits on the filthy grounds as well as ill attentions and apathy of the others whose attentions did not come to be focussed to his various representations on the subject despite a lapse of so many 4 years.

4. The facts given in the first para of the decision indicate that he was engaged as EDBPM Ganga-ghat and later on shifted as BPM Ganga-ghat and again was reverted to the Majra Pipar Khera on upgradation of the latter B.O. to departmental S.O. They do not reveal the actual position of his approved service. He had been appointed as BPM Majra Pipar Khera and as such there is no question of either engagement, or reversion from one post to another but it concerns the regularisation or approval of the service of his on a post after holding thereon a valid appointment. Not only this but the fact of his unauthorised absence from duty from 12.6.69 to 23.6.69 may be available in his file but he was never apprised of such unauthorised absence nor was served with copy of any memo. as mentioned in the decision.

.....2.

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The deciding authority's observation, with the quoted the D.G.'s instruction No.10 below Rule 4 of EDAs Conduct & Service Rules 1964 relates to ~~exgratia~~ ~~gratuitous~~ specifically the subject matter relating to eligibility for the grant of exgratia gratuity. They do not touch the very aspect of the case, decided by the said authority who is also perhaps not aware of the fact that his deputation from Majra Pipat Khara B.O. to Ganga-dhat and therefrom to his original place of posting was subject to the authoritative orders and approval of the then competent authority and as such his observation is an after thought beyond the lawful comprehension based on his only personal whim or fancy accord, his act would have been in position to be construed as an act of wilful absence involving automatic constitution of break in his service. His absence on the post was under the approval of the then authorities and therefore it dispels his doubtfulness in face of the instructions contained in the DG's letter No.43/15/65. Pen dated 7.6.68 and as such his order for non enumeration of ^{17.6.69} 'due' appllance ~~of his mind for this vital point~~, base of which was nothing but ^{17.6.69} judiciousness under the shadow constitutional safeguard, guaranteed by the Supreme Court's decision dated 22.4.77, pronouncing the EDAs as civil servants.

The facts, enunciated in para 2 of the decision state that he had absented from duty without any leave application form with further indication that he was arrested in a murder case. After his arrest, he had no time to inform the authorities, however on securing information from any source, he was put off duty by the IPOs North Sub Memo.No.A/Majhra Pipar Khera dated 27.9.71 in conformity with the instructions contained in G.I. Instruction No.4 read with G.I. M.H.A letter No.34/57/62 Avd dated 21.11.82. These extricates himself from the liability of informing the competent authority in case of a detention case.

Similarly laxity of the representationist pointed out by the competent authority with regard to not awaring him of the sentence awarded by the Sessions Court Unnao resulting in no departmental action against him, has not been his personal tortious activity in the light of the instructions of the Govt. of India No.3, stressing the need of conviction of the Govt. servant to be promptly communicated to the administrative authorities. Therefore it was the duty of the trial court/State Govt. to communicate to the competent authority about the sentence awarded to him. Thus in the light of the instructions contained in G.I. M.H.A. letter No.39172/51 Est dated 23.10.1951 liability for the non communication lies with the Court concerned and also with the competent authority by whom he was put off duty and the prolongation of his period of off duty would have been a matter of his grave concern to awaken the issue enjoying a deep slumber in the lap of no action.

However the representationist as soon as was acquitted by the appellate court had sent a copy of the judgement to the SPOs Kanpur (Mufassil) on 12.11.79 through the SPH Ganga-ghat. But no action to regularise the period of his put off duty was taken by the competent authority ~~was~~ taken after a lapse of 5 years only and on ~~fact~~^{fact} personal intervention in the matter and that too has been subjected to the victimisation of personal produnce, brushing a side analytical various aspects of the constitutional protection safe guarded by the article I & II of the Indian constitution as a result of decision of the Supreme Court dated 22.4.77.

A look into the para 6 of Section VI of Swamy's
Compilation of Service Rules of EDAs Conduct & Service Rules
.....3.

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1964 stresses the need of the regularisation of the period of put off duty caused owing to his being implicated in a criminal case. It ought to have been decided as duty for all purposes by drawing up the procedure prescribed for regular Government servants in terms of the DG's Instructions No.12 and 3 contained in letter No.43/42/78 Pen/Disc/II dated 22.6.79.

The competent authority has simply given weightage to the conviction made by the District Sessions trial Court Unnao, but has been unmindful of the verdict of the lower court, bestowing the representationist upon the restoration of full service benefits, protected by the instructions contained in clause 3(a) of Govt. of India Instruction No.4 below Rule 14 of CCS (CCA) Rules 1965, read with proviso under Rule 10(4) as inserted by the notification dated 7th Sept.1981 and Govt. of India instruction No.5 below Rule 10. They fully attract the proviso (2) to clause (2) of article 311 of the constitution.

The entire decision depicts the inactionariness of the office of the competent authority which did not take a proper recourse to the procedures enunciated in the various rules of the Deptt. but kicked down the right of the representationist under the pressure of the power in disregard of the departmental rules/Instructions/Orders. The facts contained in the decision bear some things else rather the facts, given in his letter No. A.4/EDA/Majhra Pipar Khera/84-85 dated 25.4.84 diverting them to the opposite directions to each other with a view to unopening of the door of human comprehension so that the tricksome activities may find no room to come to light but the grasping of the facts may be illusory.

With regard to his working as EDDA Ganga-ghat, the representationist has to assert that he had been, due to financial handicap in a deplorable condition, being unemployed deprived of his old post, had accepted the offer as temporary measure without furnishing any undertaking that he was prepared to forge the benefits of the old post on which he was holding a notional lien as a holder of civil post. If the offer of the appointment was such thorny to him it was the moral and legal liability of the appointing authority to apprise him of the probable consequence on acceptance of his offer, because that authority was dully well versed with the technical knowledge of such type of intricacies. But nothing was pointed out and as a lay man to feed the hungry family member, he had to accept the offer.

The whole decision is not complete in itself. It has been subjected to inaccuracy in the sense that the period with effect 8.2.80 has been decided whereas regarding the period prior to 8.2.80, assurance for deciding the same has been given.

In the end, the representationist has to pray that the entire period of his service commencing from the B.O. Majhra Pipar Khera may kindly be ordered to be treated as duty by regulating the period of off duty owing to his involvement in the criminal case and he may be declared a successful candidate of the Postman examination, passed by him.

Yours faithfully,
[Signature] 11-4-85
(Manuman Prasad)

the then EDDPM Majhra Pipar Khera and
now EDDA Ganga-ghat(KP)

Dated 11-4-85.

TRUE COPY for information

[Signature]
(R. K. Tewari Advo)

A-32

-21-

Annexure A VII
Department of Posts, India

From अधीक्षक डाकघर
कानपुर मुमकिन प्रलय
कानपुर - 208001

Regd

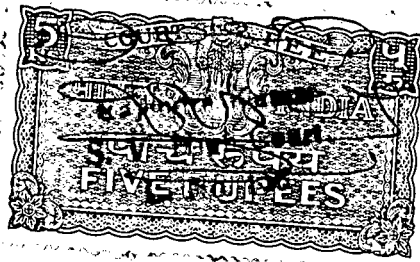
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ए. शारदा डाकपाल
ममरा पीपरवेड़ा, उन्नाव
NO 34-4/50510/ममरा पीपरवेड़ा के कानपुर 25/88
विषय - श्री हनुमान प्रसाद द्विवेदी ए. शारदा
ममरा पीपरवेड़ा की अधीन को
प्रकरणा

उक्त विषयक मामले में निदेशक
डाक सेवा कानपुर के पत्र सं. अमला/
34-400/84/11 दि. 23-3-88
के द्वारा आपकी अधीन Reject
कर दी गयी है। सूचना सेवा है
प्रामाण्य है।

हो आया
अधीक्षक डाकघर
कानपुर मुमकिन प्रलय
कानपुर 208001.

TRUE COPY
R. K. Tewari
(R. K. Tewari Advo.)

हनुमान प्रसाद द्विवेदी



A-33

वकालतनामा

अदालत The Central Administrative Tribunal

Allahabad-16

नम्बर मुकदमा

OA Regn. No.

of 1988

नम्बर इजारा

सन् १९ ई०
सन् १९ ई०
मुद्दई

Hanuman Pd.
Divvedi

बनाम Singh M. D. Kanpur
& another.

अपीलाफ्त

मुद्दालेह

मैं Hanuman Pd. Divvedi
Prasad Divvedi

मैं/हम 10 Village Banker Dist. Munao
निवासी

श्री R. K. Tewari, Advocate, 154 Purshottam -
Nagar, Allahabad-16

को उपरोक्त मुकदमे की पैरवी के लिये मेहनताना अदा करने का वचन देकर मैं / हम अपना वकील नियुक्त करता हूँ / करते हैं। उन वकील महोदय को मैं / हम यह अधिकार देता हूँ / देते हैं कि वह मुकदमे में मेरी ओर से पैरवी करें आवश्यक सवाल पूछें, जवाब दें और बहस करें दस्तावेज व कागजात अदालत में दाखिल करें, व वापस लेवें पंचनामा उपस्थित करें, पंच नियुक्त करें यदि आवश्यकता हो तो पंच निर्णय का लिखित विरोध करें, सुलहनामा दाखिल करें, दावा स्वीकार करें, उठा लेवें और डिग्रा प्राप्त हो जाय तो उसे जारी करावे, डिग्री का रुपया व खर्चा, हर्जाना का रुपया या किसी दूसरे तरह का रुपया व खर्चा जो अदालत से मुझे / हमें मिलने वाला हो वसूल करें मेरी / हमारी ओर से अदालत में दाखिल करें, कोर्टफीस व स्टाम्प देवें या वापिस लेवें रसीद ले लेवें व प्रमाणित करें, नकल प्राप्त करें, अदालत की अनुमति से मिसिल का मुआयना करें, आवश्यकता होने पर मुकदमा स्थापित करावें व इस मुकदमे के सम्बन्ध में दूसरे काम जो जरूरी समझें पैरवी के लिए अपनी ओर से कोई दूसरा वकील नियुक्त कर यदि आवश्यकता हो तो अपील या निगरानी दायर करें और अपील निगरानी की अदालत में पैरवी करें और यह भी वचन देता हूँ / देते हैं कि यदि मैं / हम पूरी फीस या खर्च न अदा करूँ / करें तो वकाल साहेब व उनके क्लर्क बहस व पैरवी के लिये बाध्य न होंगे।

इस अधिकार पत्र के अनुसार उक्त वकील महोदय इस मुकदमे के सम्बन्ध में जो कुछ काम करेंगे वह सब अदालत में स्वयं मेरा/हमारा किया हुआ समझा जायेगा और वह मुझे हमें सदैव ही मेरे/हमारे किये के समान सवथा मान्य होगा।

तारीख

27th April

सन् १९ ई०

Accepted
R. K. Tewari

R. K. TEWARI
हस्ताक्षर
Advocate

154, Purshottam Nagar
(Khulabad)
Allahabad-16

सन् १९

बनाम

अदालत
मुकदमा नं०

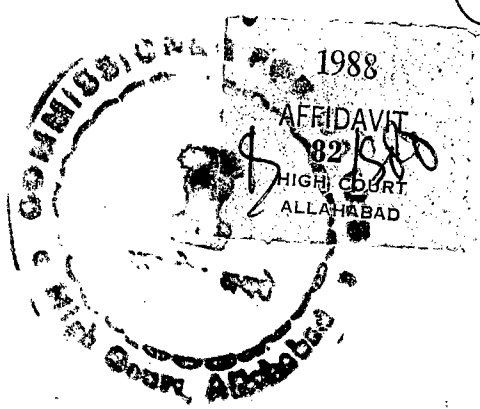
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हस्ताक्षर
उपस्थित
दिनांक

A-34



In the Central Administrative Tribunal, Addl. Bench,
Allahabad.

...

Counter-Affidavit

In

Registration no. OT 623 of 1988.

Sri Hanuman Prasad Dwivedi Petitioner.

Versus.

1. The Superintendent Post Offices,
Mufassal Division, Kanpur.
 2. The Director, Postal Services, Kanpur.
- .. Respondents.

Received
Dwivedi
27/6/88

Affidavit of Kariman Singh
aged about 42 years, son
of Sri Sudarshan Singh,
Assistant Superintendent
Post Offices, Unnao.

Deponent.

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

1. That the deponent is working as
Assistant Superintendent Post Offices, Unnao and
has been authorised to file the present counter
affidavit on behalf of the respondents in the
aforesaid case. He is, as such, well-acquainted with
the facts of the case deposed to below.



AKC

A-38

.2.

2. That the deponent has read the contents of the petition and has fully understood the contents thereof.

3. That before giving parawise reply to the petition it is necessary to set out brief facts which are relevant for understanding the controversy raised by means of this petition, moved under Section-19 of the Administrative Tribunal Act, 1985.

4. That Sri Hanuman Prasad Dwivedi, the ^{petitioner} was engaged as Extra Departmental Branch Post Master Majra Piper Khara in the month of April, 1968. Later on he was shifted to work as Extra Departmental Branch Post Master Gangaghat but consequent on upgradation of Gangaghat Extra Departmental Branch Office as Departmental S.O., the said Sri Hanuman Prasad Dwivedi was again reverted as Extra Departmental Branch Post Office, Majra Piper Khara with effect from 26.2.1969.

5. That while working as Extra Departmental Branch Post Master, Majra Piper Khara, the said Sri Hanuman Prasad Dwivedi remained on unauthorised absence from 12.6.69 to 23.6.69. The period was treated as break vide Inspector of Post Offices North Sub Division Memo No.A/Majra dated 27.6.1969.



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6. That since the services of Extra Departmental employees are not transferable, the frequent changes from one place to another the request of the official or otherwise will automatically be treated as break in service. Further the unauthorised absence even for a day constitutes a break in service of an Extra Departmental Agent unless regularised as authorised leave or condoned vide Director General, Post & Telegraph instructions No.10 below rule-4 of the Extra Departmental Agent Conduct & Service Rules. As such the services rendered by said Sri Hanuman Prasad Dwivedi in any capacity upto 23.6.69, will not be counted ~~for~~ for any other purposes.

7. That while working as Extra Departmental Bran Post Master, Majra Pipar Khara the said Sri Hanuman Pd. Dwivedi, applicant again absented himself with effect from 27.9.71 without any leave application or authorised leave.

8. That on enquiry it was found that Sri Hanuman Pd. Dwivedi, the applicant was arrested in a murder case. Consequently, he was put off duty with effect from 27.9.1971 vide Inspector of Post Offices North sub Division Unnao Memo No. A/Majra




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Piper Khara, dated 18.10.71 which was confirmed vide Senior Supt. of Post Offices, Kanpur Division Memo No. A4/EDA/Majra Piper Khara dated 8.11.1971. In the murder case, the said Sri Hanuman Prasad Dwivedi was sentenced to undergo imprisonment for life under Section 302/149, I.P.C. vide sessions Judge Unnao Judgment dated 30.10.1972, but the official failed to perform his legitimate duty to inform this office with the fact of his sentence awarded by Hon'ble Sessions Judge Unnao to enable this office for taking necessary action against him. It was his duty to inform the Department about the sentence imposed upon him. In the absence of any information /knowledge to the Department no action under Rule-6 or Rule-8 or Rule-8A as applicable under Extra Departmental Agent Conduct & Services Rules could not be taken by the Deptt. and the applicant Sri Hanuman Pd. Dwivedi continued as put off duty.



9. That though no order of termination of service of the applicant are available in the file but the services stood terminated automatically with effect from 30.10.1972 that is the date of judgment when he was sentenced for life imprisonment.

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10. That since the Extra Departmental Agents do not hold any lien on any post, there is no provision in the rules to keep the post vacant for such official till the cases are decided in appeals. Moreover, the applicant apprised this Department with the fact that he was acquitted in appeal by the Hon'ble High Court of Allahabad Bench at Lucknow on 14.11.79.

When the copy of judgment was received by the Senior Department vide Superintendent Post Master Gangaghat letter no.150 dated 12.11.79. This Department was in a position to take action against the applicant under the relevant Rule-6, 8 or 3A or Extra Departmental Agent Conduct & Service Rules, or put him on duty after going due considerations to all facts, after 12.11.1979 only when the judgment was received. For a moment taking into account beneficial construction of the Rules in favour of the official, Had the applicant been fully exonerated and reinstated on duty. The period during which the said Sri Manuman Prasad Dwivedi, the applicant was not in service or remained out of duty could not have been taken into account for computing his length of service in view of Director General Post & Telegraph Instructions No.11 below rule-6 of Extra Departmental Agent Conduct & Service Rules.

11. That in the meanwhile the applicant

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Sri Hanuman Pd. Dwivedi was engaged as Extra Departmental Mail Peon Gangaghat with effect from 4.1.1979 in place of Sri Munshi Lal.

12. That in response to Asstt. Supdt. Post Office East Sub Division Unnao Advertisement no. A/EDMP/Gangaghat dated 2.10.1979, the applicant applied for the post of Extra Departmental Mail Peon Gangaghat without furnishing any detail of previous service/conduct. Consequent in ignorance of the said fact the applicant was appointed as Extra Departmental Mail Peon vide Asstt. Supdt. Post Offices, Unnao Memo .A/EDMP/Gangaghat dated 8.2.1980 and since then the applicant is working as Extra Departmental Mail Peon Gangaghat , Unnao.

13. That the contents of paras nos. 1 to 5 of the petition are matters of record and ,as such, requires no reply by means of this affidavit.

14. That the contents of para no 6(i) of the petition are not admitted as stated therein. The correct fact is that the applicant was engaged as Extra Departmental Branch Post Master Majra Pipar Khara in April, 1968 and later on he worked as Extra Departmental Branch Post Master Gangaghat.

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The post of Extra Departmental Branch Post Master is not transferable. The applicant after being exonerated in the murder case intimated this department about it on 14.11.1979 after a lapse of more than three years. The contention of the applicant is incorrect that he immediately applied for taking back on duty. The applicant applied for appointment as Extra Departmental Rank Mail Peon Gangaghat on . In his application the applicant did not mention the details of past services. He submitted the application for appointment of Extra Departmental Mail peon in response to the S.D.I. East Unnao letter No. A/EDMP/Gangaghat dated 3.10.1979. Since the matter about the treatment of period, the applicant remained absent was not decided by the competent authority, therefore, he was permitted to take examination in July, 1983 provisionally. As per Director General Instructions contained in letter no. 47-5/79-SERo/= dated 20.3.79 and 27.1.1981 and no. 47-5/80-SPB-1/81 dated 7.4.80. A list of Extra Departmental Agents will be drawn according to the seniority and the number of candidates to be permitted to appear in the examination will be five times of the vacancies. The name of the applicant does not come in merits because he had rendered only about three years service in the Department. It is incorrect that the Director, Postal Services, Kanpur has condoned the break of

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service as claimed by the applicant. Since the applicant was appointed vide Asstt. Supdt. Post Offices Unnao memo dated 3.2.80, the period before 3.2.80 cannot be treated as duty. The examination for the recruitment in postman cadre was not held by the Supdt. Post Offices, Kanpur IP (M) Division in the year 1978. It is wrong to say that the applicant rendered continuous three years service in the Deptt..

15.

That the contents of para no.6(ii) of the petition are not admitted as stated therein. It is stated that receipt of application dated 9/10.11.1976 is not admitted as no records of ordinary letter is kept. The receipt of reminder is also not admitted. Substitutes for the post are given by the employee who proceeds on leave. The applicant might have been employed in place of Sri Munshi Lal on his absence. The contention is also incorrect that he was appointed as Extra Departmental Mail Peon Gangaghat in consideration of his past experience. The applicant did not mention that he ever worked as Branch Post Master Majra Pipar Khara and Gangaghat. He was appointed as a fresh candidate. As the applicant worked as substitute of Sri Munshi Lal, the question of counting his past services does not /did not arise.



16. That the contents of para no.6(iii) of the petition are not admitted. It is submitted that

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the applicant has himself mentioned that he worked in place of Sri Munshi Lal, therefore, it is quite clear that his services were not counted because he was not an appointee. The contention of the applicant is wrong that there are specific instructions from Director General, Post & Telegraph to count such services for all purposes.

17. That the contents of para no.6(iv) of the petition are not admitted. The correct facts have already been stated in the preceding paras of the counter affidavit, and the same are reiterated as correct. No application dated 9/10 November, 1976 was received in this office. The Post of Extra Departmental Mail Peon, Gangaghat was not given to the applicant but he was substitute of Sri Munshi Lal. The applicant never informed the Department about his acquittal having been made by the Hon'ble High Court. Therefore, the question of his posting as Extra Departmental Branch Post Master did not/could not have been arisen. Past services of the applicant were not counted in accordance with the Rules.

18. That the contents of para no.6(v) of the petition are not admitted. The applicant was appointed as Extra Departmental Mail Peon, Gangaghat with effect from February, 1980 as ~~his~~ *fresh candidate*. As such the services of the applicant

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other than the services rendered as Extra Departmental Mail Peon, Gangaghat with effect from 8.2.1980 cannot be taken into account for any purpose including the purpose for computation of length of service for appearing in any departmental examination and/or grant of ex-gratia gratuity and there is no illegality in the orders passed by Senior Supdt. Post Offices Mufassal Division.

19. That in reply to the contents of para no.7 of the petition under the heading Relief sought it is submitted that the petitioner is not entitled to any relief I, II and III sought for by means of the present petition and the order dated 23.3.1988 and appellate order dated 21.3.1988 do not suffer from any infirmity and are perfectly legal orders.

20. That under the heading interim reliefs it is submitted that the applicant is not entitled to any interim reliefs during the pendency of this application. As already stated above the applicant does not come in merit and, as such, is not entitled for declaration of the result as prayed for.

21. That the contents of paras nos. 9, 10, 11 and 12 of the petition are all matters of record and requires no reply by means of this affidavit.



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.11.

The petition is devoid of merits and is liable to be rejected by this Hon'ble Tribunal.

I, the deponent, abovesigned, do hereby verify and declare that the contents of paras nos. 1 to 2

of this affidavit are true to my personal knowledge; those of paras nos. 3 to 21


of this affidavit are based on information received from perusal of the papers on record; those of paras nos. 2

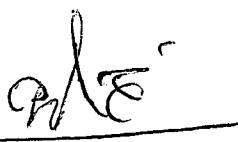
of this affidavit are based on legal advice which all the deponent believes to be true; that no part of this affidavit is false and that nothing material has been concealed in it.

So help me God.


Deponent.

I, R.C. Yadav, clerk to Sri Ashok Mohiley, Advocate, High Court, Allahabad do hereby declare that the person making this affidavit and alleging himself to be Sri Karishan Singh is the same person who is personally known to me.


R.C. Yadav
23/6/88
Clerk.





A-45

.12.

Solemnly affirmed before me on this ^{23rd} day of June, 1988 at ^{6:00} ~~5~~ a.m./p.m. by the deponent who is identified by the aforesaid clerk.

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

AKT

Oath Commissioner

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2376/002

A-46

Before the Central Administrative Tribunals
Allahabad.

O.A.Regnl No.923 of 1987.

Hanuman Prasad DwivediPetitioner

Versus

Union of India and others.Respondents.

REJOINDER

TO

The reply affidavit filed by the respondents
on 27.6.88.

The applicant most respectfully begs
to state that before submitting a parawise comment.
He may be permitted to lay down the following few
facts which will help in adminstering justice.

(1) The applicant was provisionally
admitted in examination for the recruitment of
Postman conducted by Chief Postmaster Kanpur in
July 1983. His result is withheld and it will
be announced when it is finally established
in this court that he was legally entitled
to appear in the said examination. As per rule
1 under the *Caption* Promotion to cadre of

Rw Tewar

Received Copy
R.C. Yadav Clerk
Sri Ashok Mohiley
Advocate
16/9/88

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: 2 :

Postman' contained in Section V 'Promotion Prospects' of E.D.A. (Conduct & Service Rules- 1964 E.D. Agents with more than 3 years of E.D. service and are below 42 years of age are eligible to appear in the examination for appointment to the cadre of Postman and village Postman.

(3) There is absolutely no dispute with regard to the fact that the applicant is much below the age of 42 years.

(4) The only disputed point is whether he has put in 3 years of service or not. Vide contents of para 2 on page 6 of the reply affidavit "the applicant was appointed as Extra Departmental Mail Peon vide Assistant Superintendent Posts offices Unnao Memo No. A/E.D.M.P./Ganga Ghat dated 8.2.1980 and since then the applicant is working as Extra departmental Mail Peon Gangaghat, Unnao". A perusal of the above memo No. A/E.D.M.P./Gangaghat dated 8.2.1980 appended herewith as Annexure A-VIII on page 8 will show that the applicant had been working on this very post since 4.1.79. The entire service from 4.1.79 to 8.2.80 was regularised by the Assistant Superintendent of Post Offices Unnao. The point of confusion is that on 4.1.79 the post of E.D.M.P. Gangaghat had been under the control of Inspector Post Offices Unnao. In February 1980 the post of Inspector Post Offices Unnao was converted into that of an Assistant Superintendent Post Offices Unnao and

R. J. J.

he became the controlling officer of that post of E.D.M.P. Gangaghat. Thus it was in fact the same officer who appointed the applicant as E.D.M.P. Ganga Ghat on 4.1.79 and later on regularised his services right from 4.1.79 by issuing an appointment order on 8.2.80.

(5) In this very connection there is one more point of dispute. It is because of wrong reliance of the learned respondents on D.G's Instruction No. 11 below Rule 4 of E.D.A. (conduct & service) Rules in rejecting the period of put off duty followed by Hon'able acquittal from all charges has been rejected in computing his length of service. The last sentence of Para 10 on page 5 of the reply affidavit read as follows:

"The period during which the said applicant was not in service or remained put off duty could not have been taken into account for computing his length of service in view of D.G. Post and Telegraph instruction No. 11 below Rules 4 of E.D.A. (Conduct & Service) Rules".

This view is highly misconceived. According to the said D.G's instruction No. 11 below rule 4 the period of put off shall not be taken into account for computing length of service for the purpose of granting amount of gratuity and not for granting permission to appear in the departmental

R. H. W. S.

examination for which D.G's instruction No.4 below Rule 9 which read as follows is applicable-

(4) Reckoning of "Put off" period for determining selection to regular posts. It was clarified in this office letters of even number dated 20.3.79 and 27.1.1981, that the E.D.As will be eligible for appointment on the basis of length of service after they have qualified in the prescribed test. It has been decided that the following periods may be added to the actual duty period for the purpose of reckoning/determining their selection to regular posts on the basis of recruitment examination:

(4) Reckoning of "put Off" period for determining selection to regular posts:- It was clarified in the office letters of even number, dated 20.3.1979, and 27.1.1981, that the E.D.As will be eligible for appointment on the basis of length of service after they have qualified in the prescribed test. It has been decided that the following periods may be added to the actual duty period for the purpose of reckoning determining their selection to regular posts on the basis of recruitment examination:

1. The period during which an E.D.A.

L. D. J. J.

remained "put off" duty for contemplated disciplinary or criminal proceedings provided he has been taken back to duty without the penalty of dismissal or removal from service imposed on him.

(D.G. P.& T N D Letter No.47/5/79-S.P.B-I dt. 22.10.1982).

In this way the applicants service comes to 4 years of actual service + 8 years of suspension period from 27.9.71 to 3.1.79 or 12 years which justifies his eligibility for appearing in the said recruitment examination held in July 1983 beyond all doubts.

(6) Now coming to the para wise reply the applicant most respectfully submits as follows:-

(7) Paras 1 to 7 require no reply as they are little concerned with the instant case.

(8) Contents of paras 8 and 9 admitted to the extent that the applicant was involved in a criminal case and he was put off duty from 27.9.71 by the I.P.Os North, Unnao. Rest of the averments are superfluous.

(9) Contents of para 10 are emphatically denied in view of the facts narrated above in para 5.

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- (9) Para 11- Not disputed.
- (10) Para 12- Denied in view of facts narrated in para 4 above.
- (11) Para 13 - No comments.
- (12) Contents of para 14 are admitted only to the extent that the applicant had been put off duty/removed from services from 27.9.71 to 3.1.79 and from 4.1.79 he was appointed as E.D.M.P.Ganga-Ghat on which post he is working even today. Rest of the averments are denied.
- (13) Para 15 - Denied. The applicant has already ~~xxxx~~ produced photo copies of all V.P.Cs and receipts of registered letters.
- (14) Contents of para 16 are denied as the facts narrated therein are wrong. Shri Munshi Lal was promoted to Group D cadre and his post had fallen clearly vacant. The I.P.Os North had appointed the applicant on that clear vacant post from 4.1.79.
- (15) Contents of para 17 are denied in view of facts narrated in paras 1 to 5 above.
- (16) Para 18 - Denied in view of facts narrated in para 4 above.
- (17) *failed* Para 19 - As the respondents have miserably *failed* to controvert the allegations raised

R. H. S.

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by the applicant he fully deserves to be granted the reliefs sought for.

(18) Para 20 and 21 - No comments.

In Verification

I, Hanuman Prasad Dwivedi s/o Shri Raghubar Prasad Dwivedi r/o village & P.O. Bauthera, Unnao and working as E.D.M.P. Majra Unnao do hereby verify that the contents from 1 to 13 are true to my personal knowledge & belief and that I have not suppressed ~~any~~ any material facts.

हनुमान प्रसाद द्विवेदी

D.A./1

Signature of Rejoinderist.

Dated: 12.09.88

R. K. Tewari

R. K. TEWARI

Advocate

154, Park Road, Nagpur

(Signature)

Annexure-16

Annexure A-8

सहायक अधीक्षक हाकवर

Office of the

उन्नाव (पूर्वी), उप प्रखंड

उन्नाव-209801

Memo No A/ESM/Gangaghat

Dated Unnao the 8-2-80

Whereas on absorption of Sri Uma - Shankar Bajpai E.O.M/Gangaghat (Unn) in the cadre of Postman, Sri Hanuman Pd Dwivedi & Sri Raghunath Pd Dwivedi & V.P. Banthar (Unnao), who has been working as E.O.M.P. since 4-1-79 & vicetue absentee, continuously, is hereby appointed as E.O.M.P. ^{at} Gangaghat provisionally. ~~and~~ He shall furnish required security at once and a medical certificate of his health should be furnished from a M.B.B.S. doctor. He shall be abide by E.D.A (Service & conduct) Rules 1964 and shall be personally responsible for the records and valuables entrusted to him for conveyance etc. He shall arrange his substitute if he proceeds on leave. His services are liable to be terminated if his work and conduct is found unsatisfactory.

Dated
सहायक अधीक्षक हाकवर
उन्नाव (पूर्वी) 8/2/80
उन्नाव-209801

Gpts:-

1) Sri Hanuman Pd Dwivedi E.O.M/Gangaghat for information.

2) The SPM Gangaghat for info.

3) The O/S Unnao Ch; Unnao for MC

4) The P.M. Unnao for info.

5) ~~for~~

TRUE COPY

Rusteen

(R. K. Tewari Adco.)

in the Central Administrative Tribunal Allahabad Bench

Registration No. 623 of 1988
Petitioner/s. *Hannuman Prasad Dwivedi* Vs. *Director Postal Services Kanpur*
Plaintiff/s. } Respondent/s Opp. Parties. *Another*
Decree-holder/s. Complainant/s. } Defendant/s
Judgment-Debtor/s Accused.

I/We *Superintendent of Post offices Kanpur*
the
Nos. *(M) Division Kanpur* In the above matter hereby appoint and retain

ASHOK MOHILEY ADVOCATE HIGH COURT

to appear, act and plead for me/us in the above matter and to conduct/prosecute and defend the same in all interlocutory or miscellaneous proceedings connected with the same or with any decree or orders passed therein, appeals and or other proceedings therefrom and also in proceedings for review of judgement and for leave to appeal to Supreme Court and to obtain return of any documents filed therein, or receive any money which may be payable to me/us.

2. I/We further authorise him to appoint and Instruct any other legal practitioner authorising him to exercise the powers and authorities hereby conferred upon the Advocate whenever he may think fit to do so.

3. I/We hereby authorise him/them on my/our behalf to enter into a compromise in the above matter, to execute any decree/order therein, to appeal from any decree/order therein and to appeal, to act and to plead in such appeal or in any appeal preferred by any other party from any decree / order therein.

4. I/we agree that if/we fail to pay the fees agreed upon or to give due instructions at all stages he/they is/are at liberty to retire from the case and recover all amounts due to him/them and retain all my/our monies till such dues are paid.

5. And I/We, the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my own acts, as if done by me/us to a^t ends and purposes.

Executed by me/us this

day of

19

at

Executant/s are personally known to me he has / they have

Signature/s

Superintendent of Post Office

Kanpur (M) Division

KANPUR-208001

Satisfied as to the identity of executant/s signature/s.

(where the executant/s is/are illiterate, blind or unaquainted with the language of vakalat).

Certified that the contents were explained to the executant/s in my presence in.....the language known to him/them who appear/s perfectly to understand the same and has/have signed in my presence.

Accepted

Accepted

Counsel for the Respondent no 1 & 2 only

ASHOK MOHILEY

Flat No. 3, Block No. 7

Nagar Mahapalika Flats

Hastings Road

(Nyaya Marg) Allahabad-211001

Phone : 3046