

Annexure - A

CAT- 82

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD//
CIRCUIT BENCH, LUCKNOW

INDEX - SHEET

CAUSE TITLE

269/89 (1)

OF 198

Name of the Parties A. N. Dixit

Versus

Union of India

Part A, B and C

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Check

25-6-2011

So (J)

Cartified that no further action is required
to take and that the case is fit for disposal to the
record room (D)

28/11/

(DRM) SDR

5-6-01

P.T.O. →

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

27/9/89 (AT)

Registration No. 264 of 1989(L)

APPLICANT(S): A. N. Dixit

RECIPIENT(S): Union of India Form

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 ? Yes
3. a) Is the appeal in time ? Yes
b) If not, by how many days it is beyond time ? —
c) Has sufficient cause for not making the application in time, been filed ? —
4. Has the document of authorisation/ Vakulathama been filed ? Yes
5. Is the application accompanied by S.O./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 ? —
c) Are the documents referred to in (a) above neatly typed in double space ? Yes
8. Has the index of documents been filed and pagining done properly ? Yes
9. Have the chronological details of representation made and the outcome of such representation 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 ? —

P1

Particulars to be ExaminedEndorsement as to result of examination

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 ? —
 c) Wanting in Annexures —

13. Have the file size envelopes bearing full addresses of the respondents been filed ? —

14. Are the given address the registered address ? Yes

15. Do the names of the parties stated in the copies tally with those mentioned in the application ? Yes

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? —

17. Are the facts of the case mentioned in item no. 6 of the application ?
 a) Concise ? Yes
 b) Under distinct heads ? Yes
 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

Sincerely

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION NO. 269 of 1989. (L)

PA 2
X

APPELLANT
APPLICANT

Avadhesh Narain Dixit

DEFENDANT
RESPONDENT

Union of India & others

VERSUS

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
27-9-89	<p><u>Hon'ble Justice K. Nath, V.C.</u> <u>Hon'ble Mr. K. Obayya, A.M.</u></p> <p>Admit.</p> <p>Issue notice to opposite parties to file reply within four weeks to which the applicant may file rejoinder within two weeks thereafter.</p> <p>List for orders on 8-11-1989.</p> <p>In the matter of interim relief issue to show cause why the opposite parties should not pay the due salaries of the applicant from 5-6-87 to 29-8-89.</p> <p>A.M. V.C.</p> <p>rrm/</p>	<p>OK Notices issued to opposite parties</p> <p>11/10 Neither any reply nor any undelivered copy received in office. Submitted for date.</p> <p>7/11</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

OA
REGISTRATION NO. 269 of 1989.

APPELLANT
APPLICANT

VERSUS

DEFENDANT
RESPONDENT

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
22/5/90	<p>Hon. Mr. B.C. Mathur, V.C. Hon. Mr. D.K. Agrawal, J.M.</p> <p>Shri T.N. Tiwari, for the applicant and Shri V.K. Choudhury, for the opposite parties are present.</p> <p>Civil Misc. Appl. No 358/90(c) taken up. Let, it be corrected, in respect of, annexure's to the petition.</p> <p>Put up on 24/5/90, as first case for hearing.</p> <p>See J.M.</p>	
24-5-90	<p>Hon. Mr. B.C. Mathur, V.C. Hon. Mr. D.K. Agrawal, J.M.</p> <p>Mr. T.N. Tiwari for applicant Mr. V.K. Choudhury for respondent</p> <p>Heard the arguments of learned counsel for both the parties. Judgment reserved.</p> <p>J.M.</p>	<p>See V.C.</p>

Received
order

Chancery
28/5/90

Recd. by
Chancery
30/5/90

A-3

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.
LUCKNOW CIRCUIT BENCH,
LUCKNOW.

Regn. No. OA 269 of 1989(L) Date of decision: 25.5.90

A.N. Dixit Applicant.

Vs.

Union of India & Others Respondents.

PRESENT

Shri T.N. Tewari, counsel for the applicant.

Shri V.K. Choudhary, counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

Hon'ble Shri D.K. Aggarwal, Member (J).

(Judgement of the Bench delivered by Hon'ble
Shri D.K. Aggarwal, Member (J).)

This application under Section 19 of the Administrative Tribunals Act, 1985, is directed against the order of removal of the applicant from service dated 29.8.1989.

2. The brief facts are that the applicant employed as Extra Departmental Runner at Branch Post Office Sursa, Distt. Hardoi, was convicted on 19.5.87 by the VII Additional District & Sessions Judge, Hardoi, under Section 306 I.P.C. and awarded an imprisonment of five years on the charge of murder of his daughter-in-law on the issue of demand of dowry. Therefore, his services were terminated by an order dated 5.6.1987 under clause (a) of proviso to Article 311(2) of the Constitution. The said order of removal was challenged by means of OA 211/88 which was decided by an order dated 2.5.1989 whereby the order of removal was quashed on the ground that the competent authority had failed to take into account the conduct of the applicant which led to his conviction. It was directed that the applicant shall be deemed to have continued in service as Extra Departmental Mail Runner with all consequential benefits, but it shall be open to the

DK Aggarwal

AM
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competent authority to re-examine the case and pass fresh orders with respect to the conduct of the applicant which led to his conviction in accordance with law. Thereafter, the competent authority, in the first instance, passed an order dated 25.5.89 which was a composite order treating the applicant to have been put off duty with effect from 5.6.1987 (date of order of termination) and further requiring him to show cause why he need not be removed from service. After considering the reply of the applicant, the competent authority passed the impugned order dated 29.8.89 removing him from service. The present application is directed against both the orders i.e. 25.5.89 and 29.8.89.

3. We have heared the learned counsel of the parties and perused the records. The order of conviction dated 19.5.87 was stayed by an order dated 17.7.87 by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow. A copy of the said order was filed in OA 211/88 as Annexure V. A reference thereof finds place in the judgement of OA 211/88. Further, it was not clear from the language of the order dated 17.7.87 as to whether the operation of sentence only was suspended or the operation of the order of conviction was also suspended. Therefore, the applicant, it appears, moved another application before the High Court of Judicature, Allahabad, Lucknow Bench, Lucknow, whereupon an order or order dated 18.8.89 was passed. A copy thereof has been supplied to us at the conclusion of the arguments which we have placed on record. It reads like this:

"This is an application for staying the conviction and sentence awarded by the 7th Addl. Sessions Judge, Hardoi by order dated 17.7.87. This court has stayed the operation of sentence dated 19.5.87. Therefore, there is no question for staying conviction and sentence. Therefore, reject. OJ/DR

D.K.G.

A3
3

A perusal of the aforesaid order leaves no scope for doubt that the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, had stayed the operation of the order of conviction as well as the sentence. If so, no conviction order remains in force till the decision of appeal. In the circumstances, without further dilating on the point, it can be at once observed that the impugned order of removal under clause (a) of provision to Article 311(2) of the Constitution is not sustainable in law. Therefore, we are constrained to quash the impugned order of removal with a direction to treat the applicant in service with all consequential benefits throughout. Accordingly, the application is allowed without any order of cost.

D.K. Aggarwal
25.5.90
(D.K. Aggarwal)
Member (J)

B.C. Mathur
25.5.90
(B.C. Mathur)
Vice-Chairman (A)

VI

(P.M.)

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW BENCH, LUCKNOW.
Crl. Appeal No. 359 of 1987.

1. Akhilesh Kumar son of Avdhesh Narain (Kumar)
2. Avdhesh Narain son of Radha Krishna Dixit.
3. Smt. Ram Nandan wife of Shri Avdhesh Narain,
R/o Kutubpur Post Office Kutubpur
P.S. Kotwali City Distt. Hardoi.

... Applicants

versus

State

... Opp. Party

Criminal Appeal against the judgment and order
dated 19.5.1987 passed by Sri Surej Singh Raudhra
VIIth Adlt. Sessions Judge, Hardoi. in Crime
No. 309/86, U/S 498-A I.P.C. and 306:34 I.P.C.

Lucknow Dated: 21.5.1987.

Hon'ble P. Dayal J.

Admit. The appellants be enlarged on bail on
their each furnishing adequate sureties to the
satisfaction of the C.J.M. Hardoi.

Sd: P. Dayal.

21.5.1987.

ENCL/-

TRUE COPY

21.5.1987
R. K. Kumar

Section Officer 7-7-17

Copying Department.

High Court, Lucknow Bench.

LUCKNOW.



IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW BENCH LUCKNOW.

CRIMINAL MISC. AN. NO. 674 of 1987.

IN

Criminal Appeal No. 359 of 1987.

1. Akhilash Kumar son of Akhilash Narain (Kumar)
2. Awadhesh Narain (Kumar) son of Radha Narain
Both R/o. ^{Allahabad} Kuttuwapur, P.S. Kpt. Ali City,
Distt. Hardoi.Applicants

App. 11 - 100.

vs.

State of U.P.Appellants.

Criminal Appeal against the judgment and
order dated 19.5.87 passed by Sri Gurjeet Singh, M.R.
7th Upper Sessions Judge, Hardoi in S.P. No. 102/87
u/s. - 498-A 305/34 1.P.C.

LUCKNOW DATED - 17.7.1987.

Hon'ble F. Dayab, J.

In addition to the order passed on 21.5.87
21.5.1987 with regard to the prayer of bail of the
appellants, it is further ordered that the operation
and sentence dated 19.5.1987 passed by M.R. 7th Upper
Sessions Judge, Hardoi shall remain suspended till
further orders of the court.

sd/-F.L. 100.

17.7.1987.

RSR/-

Ex-Ak-Bhatnagar
18-8-87

TRUE COPY

SP Singh

10/10/87
Section Officer

Copying Department

High Court, Lucknow R.

LUCKNOW



A.Y.
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THE HON'BLE COURT OF APPEAL FOR UTTAR PRADESH
Lucknow Bench, Lucknow.

C.I. M.R. NO. 1201 of 1989.

IN

Criminal Appeal No. 359 of 1987.

1. Akhilesh Kumar s/c. Avadesh Narain (Kumar)
2. Avadesh Narain (Kumar) son of Radha Krishna,
R/o. Katalpukur, P.t. Kotwali City Distt.
Hardoi, Appellants.

VS.

State, Opp. Party.

S.T.O. 309 of 1986,

Date of Judg. etc. Sessions Judge, 19.5.87,

By VII Additional Sessions Judge, Hardoi,

U/s. 493-A/306 I.P.C.

(P.t. Kotwali City, Distt. Hardoi,
APPLICATION FOR BAIL (Stay).

LUCKNOW DATED - 18.9.1989.

Hon'ble L.K. Triwedi, J.

This is an application for staying the conviction and sentence awarded by the 7th Adml. Sessions Judge, Hardoi. By order dated 17.7.87, this Court has stayed the operation of order as well as sentence dated 19.5.87. Therefore again there is no question for staying the said conviction and sentence. The application is therefore, rejected.

Sd/- L.K. Triwedi,

18.9.1989.

TRUE COPY

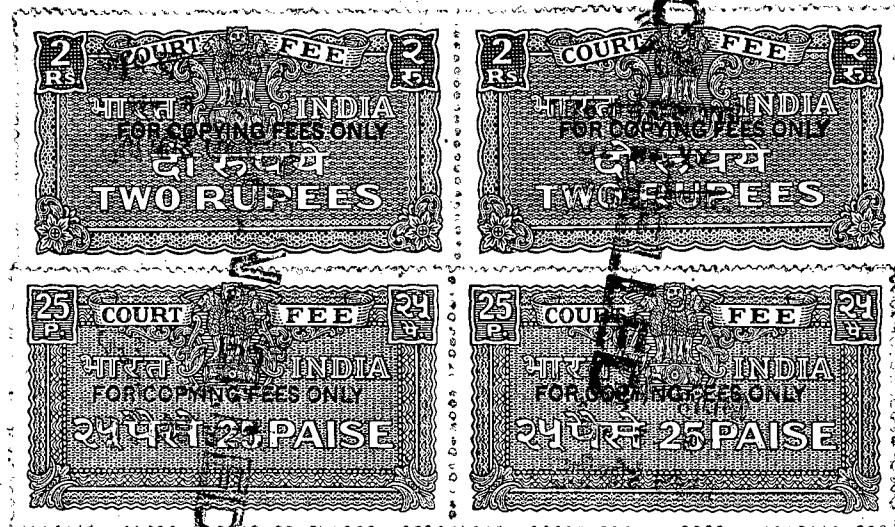
Section Officer

Copying Department 22
High Court, Lucknow Benar

LUCKNOW

19/89





Serial No with date 957441/1879/8
 Date of Application 1879/8
 Date of Preparation 22/9/8
 Date of Delivery 22/9/8
 Signature of Issuing Authority 22/9/8
 AC
 22/9/8



Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing 27/9/89
Date of Receipt by Post

O.A. NO. 269/89(L)

In the Hon'ble Central Administrative Tribunal,
Deputy Registrar (H)
Additional Bench Allahabad,

Circuit Bench at Lucknow.

O.A. No. 269/89(L)

Awadhesh Narain DixitApplicant.

Versus

Union of India & others Respondents.

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Separate

4 . Annexure A-1, copy of the Judgement dated 2-5-89.	1 - 5
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For the use in Tribunal
office

Date of filing 27.9.89

Registration No.

Signature
for Registrar.

Awadhesh Narain

Dixit

Applicant

Through Counsel

T.M. Tiwari
Advocate

Counsel for the applicant.

1
A/5
A/21

In the High Court Central Administrative Tribunal,
Additional Bench Allahabad,
Circuit Bench at Lucknow,

O.A. No. 269 of 1989 (L)

Aradhesh Narain Dixit aged about years,
son of Shri Radhey Krishna Dixit, resident
of village and Post Kutiapur, Police Station
Kotwali, district Hardoi.

...Applicant.

Versus

1. Union of India Ministry of Communication
through its Secretary, New Delhi.
2. Superintendent of Post Offices, Hardoi.
3. Assistant Superintendent of Post Offices,
Sub-Division, Sandila, Hardoi.
4. Sub-Divisional Inspector (Central)
Post Office, Hardoi.

...Respondents.

DETAILS OF APPLICATION

1. Particulars of the order against which
the application is made

That the application is made
against the order Memo No. A/Sursa/37-83 dated

21/4/84

2
25/3

-2-

at Hardei the 29-8-1989 (Annexure A-4) passed by respondent no.4 thereby removing the applicant from services with immediate effect

And Also

against the order Memo No. A/Sursa/27-88 dated 25-5-1989 (Annexure A-2) passed by respondent no.4 thereby putting off duty the applicant w.e.f. 5-6-87, despite the former order of termination of the services of the applicant w.e.f. 5-6-87 being quashed by the Hon'ble Tribunal.

2. JURISDICTION Of the Tribunal

That the applicant declares that the subject matter of the order against which redressal is claimed by the applicant is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

That the applicant further declares that the application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

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-3-

Facts of the Case

(a) That the applicant was appointed as Extra Departmental Runner at Branch Post office Surse, district Hardoi in the year 1970 and had worked there up to September, 1985.

(b) That the applicant was falsely implicated in a criminal case and on that basis he was put off his services by an order dated 8-10-1985 and since there was no direct evidence made out during investigation, he was taken back in service by an order dated 25-11-1985 quashing the order dated 8-10-1985.

(c) That the conclusion of the criminal trial however, the applicant was convicted on 19-5-1987 by V.P.I. Additional District & Sessions Judge Hardoi and was punished with an imprisonment of five years. For that reason, his services were terminated by an order dated 5-6-1987.

STG/2178/12197

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(d) That the applicant had preferred a criminal appeal in the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, which was admitted by an order dated 21-5-1987 and he was ordered to be released on bail. Subsequently, by an order dated 17-7-1987 the operation of the sentence awarded to the applicant on 19-6-1987 was suspended by the Hon'ble High Court till further orders since the appeal is still pending.

(e) That the applicant being aggrieved of the termination order dated 5-6-1987 had filed an application before this Hon'ble Tribunal being O.A. No. 211 of 1988 which was allowed by the Division Bench of this Hon'ble Tribunal comprising of Hon'ble Mr. Kamleshwar Nath J^{v.c.} and Mr. D.S. Mishra A.M. by an order dated 2-5-1989 and termination order was quashed. A copy of the said order is annexed herewith as ANNEXURE A-1 to this application.

(f) That the applicant had served upon the respondents on 23-5-1989, the order of this Hon'ble Tribunal dated 2-5-1989 but he has not been re-instated despite clear order and direction,

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5/5/6

"The applicant shall be deemed to have continued to be in service of E.D.A. Mail Carrier or Runner, entitled to all consequential benefits thereof."

(g) That it was also mentioned in last lines of the Judgement dated 25-5-1989 "but shall be opened to the competent authority to re-examine the case and pass a fresh order with respect to the conduct of the applicant which has led his conviction in accordance with law."

(h) That when the order of the Hon'ble Tribunal was served upon the respondent no. 4, he demanded a sum of Rs.5000/- instead of to re-instate the applicant which the applicant did not pay due to his poverty and shortage of funds with the result the applicant was issued a Memo No. A/Sursa/87-88 dated 25-5-1989 with an order to have continued to be put off duty from the date of termination i.e. 5-6-1987 till further orders. In the same order the applicant was asked to give explanation with regards to his conduct. A true copy of the memo/order dated 25-5-1989 is annexed herewith as ANNEXURE A-2 to this application.

31/5/2017 12:17:07

(i) That the applicant had submitted his explanation on 21-6-1989 but nothing was considered and applicant has been removed from the service with immediate effect vide respondent no.4 order dated 29-8-1989. The explanation dated 21-6-1989 and order of removal dated 29-8-1989 are annexed here with as ANNEXURE A-3 and A-4 respectively to this application.

(j) That it has been sanctified by the dicta of the Hon'ble Supreme Court in various cases that the competent authority must consider the judgement of the original court and all other facts, circumstances of the case. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the Government servant.

(k) That it is well settled that when appeal is admitted the matter becomes 'Res-integra' i.e. to say to be treated as a matter not yet decided. As such under no circumstances, the order of removal of the applicant could have been passed.

(1) That it is very much pertinent to mention here that the Hon'ble Tribunal had quashed the order of termination dated 5-6-87 vide order dated 2-5-1989 declaring the applicant to be continued in service with all consequential benefits under such circumstances removal of the applicant w.e.f. 5-6-87 is clear contemptuous act and has no legal sanctity. Under no circumstances the removal of the applicant can be from 5-6-87.

(ii) That the applicant had received the removal order by post on 15-9-1989 and approached the respondent no.2 personally on 18-9-1989 but was not heard and it was total to approach the Hon'ble Tribunal.

(iii) That in the circumstances aforesaid the interference of this Hon'ble Tribunal is very much essentially invited.

5. Grounds for Relief with legal Remedies :

That the applicant being aggrieved of the order dated 26-5-1989 and 29-8-1989 passed by respondent no.4 (Annexure A-2 and A-4) thereby

putting off and subsequent removal from service the applicant is seeking relief(s) amongst other on the following

G R O U N D S

- (1) Because the orders dated 25-5-1989 and 29-8-89 are out come of the ill-motive of respondent no.4.
- (2) Because the said orders are arbitrary, unjust, unlawful and liable to be quashed.
- (3) Because the 'put off' order can not be passed from that very date on which the termination order has been quashed by the Hon'ble Tribunal.
- (4) That no detrimental order can be passed from retrospective effect.

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R/S/2

(5) Because it has been certified by the dicta of the Hon'ble Supreme Court in various cases that mere conviction will not automatically entail the removal of the employee from service.

(6) Whereas the said order of pay off and disponent removal have been passed in contravention of the order dated 2-6-88 passed by this Hon'ble Tribunal (Annexure A-1).

5. Details of Remedies exhausted

That the applicant declares that he has availed all the remedies available to him under the relevant departmental Rules. The representation submitted by the applicant have not been given due consideration and respondent no. 2 refused to hear the applicant. Hence no other remedy is available except to approach this Hon'ble Tribunal.

7. Matter not previously filed or pending with any other Court

3198/9/78/1/1/1

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24/3/10

That the applicant declares that he has not previously filed any application, writ petition or suit regarding the matter in which this application has been made before any other Bench of this Tribunal nor any such application, writ petition or suit is pending before any of them.

3. Relief(s) Sought

In view of the facts mentioned in para 4 above the applicant begs and prays for the following relief(s).

(a) That the Hon'ble Tribunal may graciously be pleased to allow the application quashing the impugned orders dated 25-8-1989 and 22-8-1989 (Annexure A-2 and A-4) directing respondents to re-instate the applicant in service and pay him salary together with entire benefit missing out of his post.

(b) That the Hon'ble Tribunal may further be pleased to allow the cost of this petition.

24/3/10/10

(c) That any other relief or reliefs which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case be also awarded to the applicant as against the respondents.

9. Interim Order, if any, required for

That pending final decision of the application the Hon'ble Tribunal may graciously be pleased to direct the respondents to pay the salary and other dues and benefits arising out of the post of the applicant from 5-6-1987 to 29-3-1989 in compliance of the order dated 2-5-1989 (Annexure A-1) passed by this Hon'ble Tribunal.

12
R-3
12

III. A postal order serial no. DD/4-777165
dated 27/9/49 issued from the post office

~~1K-0~~ is enclosed herewith as
court fees.

12. List of enclosures

Annexure A-1 and A-3.

Lucknow, dated;

September 26, 1989.

31980 Q 19412/49
Applicant.

Verification

I, Amresh Narain Dixit, aged about
years, son of Shri Radha Krishna Dixit hereby
verify that the contents of paras 1 to 4 and 6
to 11 are true to my personal knowledge and
the contents of para 5 on legal advice which
I believed to be true. and that I have not
suppressed any material fact.

Lucknow, dated;

September 26, 1989.

31980 Q 19412/49
Applicant

Identified Shri Amresh Narain Dixit
who has signed before me.

Shri Ramdev
(Shri Ramdev)
Advocate.

In the Hon'ble Central Administrative Tribunal
Addl Bench, Allahabad
Circuit Bench, Lucknow

O.A No. _____ of 1989 (L)

Awadhesh Narain Dixit Applicant

Versus

Union of India & Others Respondents.

ANNEXURE- A-2

Department of Posts, India

Sub Divisional Inspector Post Offices(Central) Sub Dm. Hardei
Memo No. A/Sursa/87-88
Dated at Hardei, the 25-5-89.

Whereas Shri Awadhesh Narain Dixit EDR Sursa was involved in a ~~criminal~~ charge of the murder of his daughter-in-law for demand of dowry. He was convicted by the court of Law on 19.5.87 by 11th Additional session Judge Hardei and was punished ~~for~~ the offence under Section 306 IPC with an imprisonment of five years.

and whereas services of Shri Awadhesh Narain Dixit EDR Sursa(Hardei) was terminated under rule 7 of EDA(Conduct & Service) Rules, 1964 by ASPOs Sandir(Hardei) vice memo no. A/Sursa/Kutuapur dated Hardei, the 5.6.87.

And whereas Shri Awadhesh Narain Dixit EDR Sursa (Hardei) has filed the case at CAT Allahabad under re. no. OA No. 211/88. The order of termination memo dt. 5.6.87 was quashed by Vice Chairman CAT Lucknow Bench Lucknow. The Court has also allowed the complainant authority to re-examine the case and pass a fresh order with respect to the conduct of Shri A.N. Dixit EDR Sursa Hardei which had led to his conviction in accordance with Law.

Now, therefore, in pursuance of the aforesaid judgement on the Hon'ble CAT Allahabad, Lucknow Bench, the said Shri Awadhesh Narain Dixit EDR Sursa(Hardei) is deemed to have continued to be in service as EDR Sursa(Hardei) and is hereby ordered to have continued to be put off duty from the date of termination i.e. 5.6.87 till further orders as only order of termination has been set aside and you were already put off duty before termination. Since the Hon'ble Tribunal has permitted to re-examine the matter therefore you are being given an opportunity to explain your conduct /conviction within two weeks from the date of receipt of this notice. with regard to said bribe burning incident which is an offence relating to moral turpitude. If no explanation is received within time orders will be passed ex parte.

Sub Divisional Inspector
Post Offices(Central)
S.D. Dm. Hardei-241001

Copy to:-

1. Shri Awadhesh Narain Dixit EDR Sursa, Hardei (Put off duty) for information.
2. The Dm. Hardei.
3. The Dm. Dm. A/Sursa Hardei dt. 25.5.89 for information and N/A.
4. S.P.O. Sursa/Kutuapur Hardei for information.
- 6.7 Sp. e.

JKW/ST

Intimation

The Hon'ble Central Administrative Tribunal
Addl Bench, Allahabad
Circuit Bench, Lucknow
O.A No. _____ of _____
Awadhesh Narain Dixit
Versus
Union of India & Others

ANNEXURE- A-4.

DEPARTMENT OF LOGIS
OFFICE OF THE SUB DIVISIONAL INSPECTOR HDI(CENTRAL) SUB DI-
/Suran/87-88

UH80 No. 4/SURSA/87-88

Mem No. 74200-1
20 at Haydoi the 29.8.39

at Hardoi the 29.6.06

Shri Avdhesh Narain Dixit IDR of Sarsa ED.O was involved in a criminal charge of the murder of his daughter in law for demand of dowry. He was convicted by the court of law on 19.5.87 by 7th Addl. session Judge Hardoi and was punished for the offence under section 306 I.C with an imprisonment of 5yrs.

The said Shri Avdhesh Narain Dixit was served with a show cause notice vide this office memo no. evca dt. 25.5.89 and was given an opportunity to explain his conduct /conviction within 2 weeks from the date of receipt of that notice with regard to the said bride burning incident which is an offence relating to moral turpitude. The notice was delivered to Shri Avdhesh Narain on 27.5.89.

In response to above notice the said Sri Avdhesh Narain Dixit submitted his representation at. Nil which was received in the office on 23.6.89. In the representation Shri Avdhesh Narain could not explain his position regarding which led him to conviction. In para 7 of the representation he only narrated that the criminal case prosecuted against him is neither a moral turpitude nor a misconduct relating to the service. He further elaborated that the alleged criminal charge does not relate at all to his service and that as such there is no question what so ever to take action against him for that alleged offence. The contention of the said Shri Avdhesh Narain is not at all convincing. Any act of public servant punishable under any state law, even if it is performed beyond duty hours, is to be taken notice of against him.

In para 5 and 6 he has only claimed the jurisdiction and the authority to take any action against him in the matter which is neither justified nor tenable. The judgement announced by the CAF Allahabad in case no. OA-211 of 1983 clearly envisaged that it shall be open to the competent authority to reexamine the case and pass fresh order with respect to the conduct which has led to his conviction in accordance with Law. The plea that since the order of termination is quashed by the competent court of law, therefore all orders including order of put off passed prior to the passing the order of termination have also automatically

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Contd. 2/-

quashed is also not tenable. It is totally notion. The court has reversed only the process of termination as is evident from the judgement. The Tribunal neither considered 'put off' case nor expressed any concern in this regard.

As regard to declaration that Shri Avadhesh Narain is in continuous service and is entitled to all consequential benefits. The conception of the official is not maintainable. The official was put off from duty prior to the orders of termination reversed by the C.A.T. and seemed to have been put off duty from from the date of termination after the announcement of judgement. In term of rule.9 of EDA conduct and service Rule, 1964 an employee being put off duty continued to be in service and so is the case of Shri Avadhesh Narain who is being provided with all consequential benefits as are laid down in the relevant rules on the subject.

I have carefully gone through the representation submitted by Sri Avadhesh Narain Dixit EDR Sursa. (put off duty) and the judgement delivered by the court of seventh additional sessions judge Herdai dt. 19.5.87 in case no. 309/86 state v/s Akilesh Kumar and others and came to conclusion that the conduct of Shri Avadhesh Narain Dixit involves in moral turpitude which lead him to conviction for 5 years by the competent court of law. I also find that the retention of Shri Avadhesh Narain Dixit in service as EDR EDSO sursa is undesirable. The offence of bride burning is a crime against the society and is a very heinous crime and it is certainly an offence relating to moral turpitude in case any such person, who has been convicted for such offence, is allowed to continue in service, it will lead to bad effect and will also be against the policy for providing deterrent punishment for such a heinous crime. The post held by Sri Dixit also involves dealings with public and it would not be fit to retain such a person in service in public interest also. It would also be pertinent to mention that the service as EDA is not a full time employment or only source of livelihood of the EDA. It is only a part time engagement and would not be very much harsh to remove the EDR from the post of EDR Sursa EDSO.

I seek your rasud SDI(C) Herdai in exercise of power conferred under rule.8 of EDA Service and conduct rule, 1964

Contd. 2/-

He stated
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hereby order 'REMOVAL' of the said Sri Awadhesh Narain
Dixit ICR Sursa (Pgt off duty) from ~~the~~ service with
immediate effect.

Sub Divisional Inspector
Hardoi central Ispdt Bn.

Hardoi.

Copy to:-

1. shri Awadhesh Narain Dixit ICR Sursa Hardoi (ut off duty) for information.
2. The PM Hardoi
3. The S/Os Hardoi w/r his no. A/Sursa Hardoi std. 15.5.8 for information.
- 4.5. The B/M Kutuwapur/Sursa Hardoi for information.
- 6-7. O/C. Spare.

Mr. Shastri
Minister

वकालतनामा

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R/6
In the Name of C. A. T.
of the State Board of
C. B. Trustees

O. A. No. - 101969.

Awadhesh Narain Singh - Advocate

बअदालत श्रीमान

Union of India & others - Defendants

वाद संख्या - - - - -

वाद संख्या

नियंत्रित विधि - - - - -

व्यावालय श्रीमान

पंक्षकारों के नाम

वादी विधिवक्ता प्रार्थी-अभियोगी

विरुद्ध

वाद संख्या

प्रतिवादी उचित विधि-अभियुक्त

वाद का प्रकार

मेरा अवलोकनाम लीकिए गए एवं उनका विवरण

मुकदमा मुद्दे द्वारा T.N. Tiwari Advocate

को मन्त्रालय वपने वाले मुकदमा करके हबड़करार है कि वकील मौसूक बजात खुद खाद्य विभाग में किसी दूसरे वकील अदालत के जिसका मिन्जानिव अपने वकील मौसूक मुकदमा होनासुपुर्द करके अर्जी दावा बगान तहरीर व जबाबद या कोई दरस्तावत किसी किसम गुजारने या जो कुछ पैरबी है या जबाब देही तहरीर तकरीर या राजीनामा या कोई वनप्रनाद दस्तवेज पेश करें या वापस जे या कोई नक्श हासिल करे या राजीनामा करे मुनहसि इलैहमुरं बाजरे दिल्ली में खर्चा को इजरे बगानत किसी किसम दावित किया हुआ हकारा फरीक सानी का मिन्जानिव हमारे वज़रिये इसीद वस्तव्यत अपने के वज़रिये अदालत या किसी दोवार तीर पर वसूल करेगा कोई किसी मुताजिबा की मिन्जानिव हमारे दास्तिल करे जो कार्यवाही नहर हो अमल में लावे यह सब साल्ता उन मिस्त्र कर्दा खाद्य वपने के हमको कबूल व मन्जूर रहे और होगा वसूरत अदमशदाई मेहनताना वकील साहब मुकदमा की पैरबी के जिम्मेदार न होंगे । लिहाज वाद कलमात बतौर लिख दिये कि सनद रहे वक्त बरूरत काम आवे ।

Pleader

Accepted

Advocated

T.N. Tiwari
Advocate

26/9/69

In the Hon'ble Central Administrative Tribunal
Addl Bench, Allahabad
Circuit Bench, Lucknow

O.A No. 269 of 1989 (L)

Awadhesh Narain Dixit Applicant
Versus
Union of India & Others, Respondents.

ANNEXURE- A-1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.211 of 1988

A.N. Dixit Applicant
Versus

Sub-Divisional Inspector of
Post Office Central Sub Division,
Hardoi and Another Opposite Parties.

Hon. Justice K. Nath, V.C.
Hon. D.S. Misra, A.M.

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

This application under Section 19 of the
Administrative Tribunals Act XIII of 1985 seeks an
order to quash the order dated 5.6.1987, Annexure-I
passed by opposite party No.2 Sahayak Dak Adhishak
terminating the services of the applicant under the
provisions of E.D.A. (Conduct & Service) Rules, 1964.

2. The applicant was working as an Extra
Departmental Mail Carrier or Runner at Branch Post Office
Bursa District Hardoi. He was involved in a criminal
charge of the murder of his daughter-in-law allegedly
for demand of ~~desert~~ ^{down} punishable under Section 306, I.P.C.
On that basis he was put off his services by an order
dated 8.10.1985, Annexure-6. According to para 2(e)
of the Counter Affidavit, the investigation could not
bring out any direct evidence and therefore he was taken
back in service by an order dated 25.11.85, Annexure-7
quashing the order dated 8.10.85, Annexure-6. At the
conclusion of the criminal trial, however, the applicant
was convicted on 19.5.87 by VIIth Additional Sessions

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Judge, Hardoi and was punished for an offence under Section 306, I.P.C. with an imprisonment of five years. For that reason, his services were terminated by the impugned order dated 5.6.87, Annexure-I. It may be mentioned that although Annexure-I mentions that the orders have been passed under Rule 7 of the E.D.A. (Conduct and Service) Rules, 1964, but the power to pass that order exists in Rule 8(A). In the eye of law, the misdescription has no bearing upon the merits of the order.

3. The applicant preferred a criminal appeal in the Hon'ble High Court of Judicature at Allahabad Lucknow Bench. The appeal was admitted by an order dated 21.5.87, Copy Annexure-8 and he was ordered to be released on bail. Subsequently by an order dated 17.7.87, Annexure-5, the operation of sentence awarded to the applicant on 19.5.87 was suspended by the Hon'ble High Court till further orders, since the appeal is still pending.

4. The learned counsel for the applicant has urged that the termination order Annexure-I was passed by opposite party No.2 without jurisdiction because he was not the applicant's appointing authority who, admittedly, was opposite party No.1. Opposite Party No.2 is an authority superior to Opposite Party No.1. The second point urged is that the operation of the order of the Sessions Judge having been stayed by the High Court, there

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is no justification for passing the impugned order. The third point raised is that the order of termination is invalid because it has been passed only on account of the conviction of the applicant which violates the provisions of the Rule 8(A)(1) of the Rules.

5. It is not necessary to express ~~the view~~ upon any opinion. the first points because we find that the petition succeeds on the third point.

6. Rule 8 lays down the procedure for imposing penalties and the procedure contemplates a proper enquiry. Rule 8 (A) lays down the situations in which Rule 8 shall not apply. Clause (1) runs as follows :-

" where any penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge. "

The contention of the learned counsel for the applicant is that the power to pass an order of penalty without complying with the requirements under Rule 8 applies to the "ground of conduct" leading to conviction and not to the bare conviction itself. A similar provision is to be found in proviso (a) to Article 311 (2) of the Constitution of India. The learned counsel for the applicant has correctly relied upon the decisions in the case of Shyam Narain Shukla Vs. State of U.P. (1988) 6 LCD 530 where a Division Bench of the High Court of Allahabad has relied upon the observations of the Supreme Court in the case of Union of India Vs. Tulsi Ram Patel and others (1985) 3 SCC 398. It is clear from these

Mr. Stevens
Attorneys ad

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two decisions that the concerned authority must consider whether the Govt. servant's conduct which has led to his conviction was such as ~~was in the~~ ^{called for} imposition of a penalty and if so what that penalty of that could be. In Tulsi Ram Patel's case it was observed that the competent authority must consider the judgement of the criminal court and all other facts and circumstances of the case, although ^{and} ~~we have arrived~~ ^{ex parte,} at the conclusion, whether or not the government servant's conduct was such as ~~to~~ ^{called for} ~~removal~~ removal from service. The Supreme Court clearly remarked as follows : -

" The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the government servant."

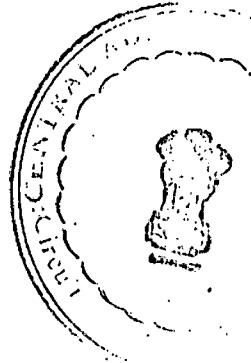
It is not necessary to multiply rulings on this point; the statute itself is clear. What is to be examined by the competent authority is the ground of conduct of the Government servant which has led to his conviction and not merely the fact of the conviction. It has been admitted more than once in the Counter Affidavit (see paragraphs 2(f) and 11) that only on the ground of the conviction of the applicant for the offence punishable under Section 306 of the Indian Penal Code the services of the applicant had been terminated. That could not be done. It is absolutely necessary for the competent authority to peruse the judgement of the Sessions Judge and find out ~~whether~~ the conduct of the applicant which led to his conviction, and whether that conduct is such as affects his position as an employee of the

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AC signed
Shivashankar

Government.

8. For reasons indicated above, we allow this application and quash the order dated 5.6.87 contained in Annexure-I to the application. The applicant shall be deemed to have continued to be in service as E.D.A. Mail Carrier or Runner, entitled to all consequential benefits thereof, but it shall be open to the competent authority to re-examine the case and pass afresh order with respect to the conduct of the applicant which has led his conviction in accordance with law. Parties shall bear their own costs.



Member (A)

Vice Chairman

Dated the 2nd May, 1989.

RKM

True copy

J.S. Dubey

Property Registrar
Central Administrative Tribunal
Lucknow Bench,
Lucknow

H.C. Mervell

Julianas Soler

In the Hon'ble Central Administrative Tribunal
Addl Bench, Allahabad
Circuit Bench, Lucknow

O.A No. _____ of 1989 (L) 6

Awadhesh Narain Dixit Applicant
Versus
Union of India & Others Respondents

ANNEXURE A-3

To,

The Sub-divisional Inspector,
post offices(Central)
Sub Division,
Hardoi. 241001.

Respected sir,

please take note of your Memo No. A/Sursa/87-88
dated May 25, 1989, in reply to the said letter, I
have to submit as under:-

1. That I had been terminated under rule 7 of EDA
(Conduct and service) Rules 1964 by ASPO, Sandila
(Hardoi) vide Memo No. A/Kutupur dated 5.6.87 on the
ground that I had been convicted in a criminal case
on May 19, 1987 by VIIth Additional Sessions Judge,
Hardoi.
2. That the aforesaid order of termination was
challenged by me in case no. 211 of 1988 (A.N.Dixit
Vs. Sub Divisional Inspector of post office) before
the Hon'ble Central Administrative Tribunal, Allahabad
Lucknow Bench Lucknow.
3. That the Hon'ble Tribunal vide its order and
judgement dated May 2, 1989 had quashed the order of
termination passed against me and directed the
opposite parties to treat me in the regular service
and also pay consequential benefits.
4. That the power to re-examine my case vested in
you by the Hon'ble Tribunal is subject to the two
conditions. It is pertinent to mention here that
these two conditions has to precede the process
of re-examination and in no circumstances can succeed
the process of re-examination. The two aforesaid
conditions are as under:-
 - a) A declaration by you that I am in continuous
service.

b) All consequential benefits to which I am entitled are paid to me.

5. That by issuing office Memo No. A/Sursa/87-88 dated May 25, 1989, you have exceeded your authority in view of the facts that prior to the issue of this Memorandum neither any declaration to the effect that I am in continuous service had been made by you nor any consequential benefits had been paid to me. Hence, the office Memo dated 25th May 1989 is illegal, void and without jurisdiction.

6. That it is stated that all orders, including order of put off passed prior to the order of termination/dismissal merged with the order of termination/dismissal is subsequently quashed by competent court of law or is withdrawn by the appropriate authority then in that case all orders including order of put off, passed prior to such order of termination/dismissal are themselves treated quashed or withdrawn, as the case may be. This legal proposition has been laid down by the Hon'ble Supreme court and other High courts in number of judicial pronouncements. In the instant case, since the order of termination is quashed by the competent court of law therefore all orders including order of put off, passed prior to the passing or order of termination have also automatically quashed. Hence no order of put off is operative against me.

7. That it is most respectfully submitted that so far as the matter of conviction is concerned which had been passed by the VIIth Additional Session Judge, Hardoi against which an appeal has already

*Mr. Allesha
Suresh*

(3)

been filed before the Hon'ble High court, Lucknow Bench Lucknow, and the same had been admitted and as such the matter is still subjudice .Moreover, it is stated that the alleged act for which criminal case is prosecuted against me is neither a moral tripitude nor a misconduct relating to the service, It is further stated that the Hon'ble Supreme court had also laid down in Glaxo case in the year 1985 that misconduct of an employee for which he can be punished should directly relate to his employment, but as the alleged criminal charge does not relate at all to my service, as such, there is no question whatsoever to take action for that alleged offence in my service career.

WHEREFORE it is most respectfully prayed in view of the above facts that I may be reinstated back in my services with all consequential benefits occurring thereon in view of the order passed by the competent court of law which has already been served on me.

For this act of your honour I will be ever grateful to you through out my life.

Thanking you.

Yours faithfully.

319 E/17/1989

(APPLICANT)

Village & P.O. Kuttuapur

Distt. Hardoi.

21-6-89

M. S. S. S.
R. S. S.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

CM APN No 35 A 1989

O.A No.269 of 1989

RAO

Awadhesh Narain Dixit

... Appellant Applicant

-vs-

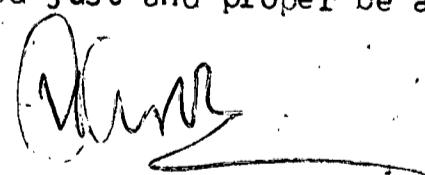
Union of India and others

... Respondents.

APPLICATION FOR CONDONATION OF DELAY IN
FILING COUNTER AFFIDAVIT.

That the opposite parties beg to submit as
under:-

1. That in the above noted case the counter affidavit could not be filed in time inadvertance. The same is now ready and is being filed herewith. *(Copy of same was given and before hand also been filed)*
2. That the delay in filing this counter affidavit was not intentional.
3. Wherefore it is most respectfully prayed that the delay in filing the counter affidavit may kindly be condoned and counter affidavit be taken on record and such other order as are deemed just and proper be also passed.



(VK CHAUDHARI)
Advocate
Counsel for Opp. parties.

Lucknow,

Dated: 17/1/89

17/1
Dec 1989.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

O.A. No. of 1989(L)

Awadhesh Narain Dixit ... Applicant

-vs-

Union of India and others ... Respondents.

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS.

I, R.S. Khurro

aged about 57² years, son of Shri Ramchand,

presently posted as Supdt. of Post Offices,

Hardoi Division, Hardoi do hereby solemnly

affirm and state as under:-

1. That the deponent is working as Supdt of Post offices, Hardoi and he has been authorised to file this counter affidavit on behalf of Respondents.

He has read the application and has understood the contents thereof and is fully conversant with the facts stated in the application and he is in a position to give parawise comments as hereinunder:-

2. That before giving parawise comments on the application it is pertinent to give brief history of the case as detailed below.

R.S. Khurro

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(a) That the applicant was appointed as Extra Departmental Runner, Sirsa in the year 1978. One Shri Ram Autar Shukla resident of Behta Sadhai, District Hardoi informed ~~thru~~ through his application dated 30.5.85 that Shri Awadhesh Narain Dixit remained in Jail with effect from 22.5.1985 to 30.9.85 under section 386 IPC Crime No. 428/85 is still there.

(b) That the complaint Inspector of Post offices was deputed to confirm the above fact. The Inspector reported that the applicant remained in jail with effect from 22.5.85 to 30.5.85. The bail was granted on 30.5.85 from the court of C.W. M. Hardoi.

(c) That the applicant was involved in a case involving moral turpitude, he was placed under ~~out~~ off duty vide IPOS Hardoi (C) Memo No. A/Sursa dated 8.10.85.

(d) That the SDI Central Hardoi reported that he contacted the E.O. (Police) and he told that from investigation no direct evidence could be found against the above noted accused. On the basis of above report the applicant was ordered to be put back duty vide SDI(C) Hardoi memo No. A/Sursa dated 25.11.85.

(e) That again it came to light on 21.5.87 that the applicant sentenced to five years imprisonment by civil and session Judge, Hardoi under section 386 IPC

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dated 19.5.87. The applicant having been convicted by the competent court of law for five years. His services were terminated under Rule 7 of EMAs (Conduct & Service) Rules 1964.

(e) That the applicant has filed the case at CAT Allahabad under Registration No. OA No. 211 of 88. The order of termination memo dated 5.6.87 was quashed by Vice-Chairman CAT Lucknow bench, Lucknow. The court has also allowed the competent authority to re-examine the case and pass a fresh order with respect to the conduct of the applicant, which has led to his conviction in accordance with Law.

(f) ~~That~~ That due to the aforesaid judgement of the Hon'ble CAT ~~at~~ Allahabad Lucknow Bench, the said applicant was deemed to have continued to be in service as EDR, Sursa (Hardoi) and ordered to have continued to be put off duty from the date of termination i.e. 5.6.87 till further order as only order of termination has been set aside as the Hon'ble CAT allowed the competent authority to re-examine the case and pass a fresh order with respect to the conduct of the applicant which has led his conviction in accordance with Law. The said applicant was served with a show cause notice vide Memo No. A/Sursa/87-88 dated 25.5.89 and was given an opportunity to explain his conduct/conviction within two weeks from the date of receipt of that notice with regard to the said bribe-burning incident which is

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an offence relating to moral turpitude. The notice was delivered to the applicant on 27.5.89.

(g) That in response to above notice the applicant submitted his representation dated 28.6.89. In his representation he could not explained about his involvement in the above offence.

(h) The applicant was put off from duty prior to the order of termination reversed by the Hon'ble CAT and deemed to have been put off duty from the date of termination after the announcement of judgement. In term of Rule 9 of EDAs Conduct and Service Rules 1964 and employee being put off duty continued to be in service and so is the case of the applicant who is being provided with all consequential benefits as are laid down in the relevant rules on the subject.

(i) That the SDI(C), the competent authority has gone through the representation submitted by the applicant (put off duty) and the judgement delivered by the court of VII Additional Sessions Judge, Hardoi dated 19.5.87 in case No.309/86 State -vs- Akhilesh Kumar and others and came to conclusion that the conduct

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of Shrixx the applicant involves in moral turpitude which leads him to conviction for five years by the competent court of Law.

(j) That it was found that the retention of the applicant in service as EDR Sursa is undesirable. The offence of bribe-burning is a crime against the society and is a very heinous crime and it is certainly an offence relating to moral turpitude in case any such person who has been convicted for such offence is allowed to continue in service, it will lead bad effect and will also be against the policy for providing deterrent punishment for such a heinous crime. The post held by the applicant also involves the dealing with public and it would not be fit to retain such person in service in public interest also. It would also be pertinent to mention that the service as FDAs is not full time employment or only source of livelihood of the EDA. It is only a part time engagement and it would not be very much harsh to remove the EDR from the post of EDR Sursa (Hardoi) and the services of the applicant (put off duty) was ordered to remove from service with immediate effect vide Memo no. A/Sursa/87-88 dated 29.8.89.

3. That the contents of para 1 to 3 of the application are formal and as such needs no comment.

4. That the contents of para 4(a) of the application need no comments.

5. That in reply to the contents of para 4(b) of the

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application it is submitted that the applicant was involved in a criminal case in which his moral turpitude was involved and as such a disciplinary action was taken in accordance with P&T EDAs Conduct Rules, 1964.

6. That the contents of para 4(c) & (d) of the application are not disputed.
7. That the contents of para 4(e) of the application are incorrect, - as stated, hence denied and in reply it is submitted that the Hon'ble CAT while quashing the punishment of termination of services of the applicant has allowed the competent authority to pass a fresh order after re-examining the case with respect to the conduct of the applicant.
8. That the contents of para 4(f) of the application are incorrect as alleged, hence denied and in reply it is submitted that the orders contained in judgement were followed in toto. The termination order was set aside and the applicant was ordered to be to have continued in service as EDR Sursa from the date of termination ie. 5.6.87. He was further ordered to have continued to be put off duty from the date of termination of service ie. 5.6.87 till further orders. An official put off d from duty is very much in service and the applicant was provided all consequential benefits as are prescribed in the rules.

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9. That the contents of para 4(g) of the application are not disputed.

10. That the contents of para 4(h) of the application are incorrect as stated, hence denied and in reply it is submitted that the allegation of the applicant that a sum of Rs.5000/- was demanded from him is totally false and baseless. The show cause notice was served on the applicant according to the rules and in the light of instruction contained in the judgement pronounced by the Hon'ble CAT, Circuit Bench, Lucknow on 2.5.89.

11. That the contents of para 4(i) of the application are incorrect, hence denied and in reply it is submitted that the representation of the applicant was considered well before issuing the order appealed against.

12. That in reply to the contents of para 4(j) of the application it is submitted that applicant has not been removed from service on the ground of his conviction on a criminal charge in lower court. He has been removed from service on the ground of his misconduct involving his moral & turpitude.

13. That the contents of para 4(k) of the application are incorrect as stated and in reply it is submitted that the disciplinary action is to be taken as soon as an official's misconduct is proved and the judgement of first court is announced and an appeal preferred, if any, can not be a bar to

R. S. K.

R.G.
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disciplinary authority.

14. That the contents of para 4(1) of the application are incorrect as stated, hence denied and in reply it is submitted that the plea that since the order of termination is quashed by the competent court of Law declaring the applicant to have continued in service with all consequential benefits, the order of removal of the applicant is clear ~~contumacious~~ contumacious is fallacious! The court in his judgement dated 2.5.89 has clearly mentioned that it shall be open to the competent authority to re-examine the case and pass a fresh order with respect to the conduct of the applicant which has led to his conviction.

15. That the contents of para 4(m) & 4(n) of the application needs no comments.

16. That the contents of para 5(1) to 5(4) of the application are incorrect as stated, hence denied.

17. That the contents of para 5(5) of the application are incorrect as alleged, hence denied and in reply it is submitted that full opportunity was given to the applicant after careful consideration on the representation and other circumstances of the case, the order of removal was passed by the competent authority on the merits of the case and as per rules.

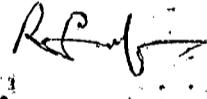
R.C.

18. That the contents of para 5(6) of the application are incorrect as stated, hence denied.

19. That the contents of para 6 of the application are incorrect, hence denied and in reply it is submitted that the applicant did not exhaust the remedial channel available to him under relevant service rules. As the removal order dated 29.8.89 is a fresh order, it should have been appealed against to the competent authority which he failed to do so, as such the application is liable to be rejected under rule 20 of CAT Act 1985.

20. That the contents of para 7, 8(a), 8(b), 8(c), 9, 10, 11 & 12 needs no comments. The reliefs sought by the applicant ~~is~~ are not tenable in the eyes of law.

21. That in view of the facts, reasons and circumstances stated in the preceding paragraphs, the application filed by the applicant is liable to be dismissed with costs to the Respondents.


Deponent.

Lucknow,

Dated: 7/11 Nov. 1989.

Verification.

That I, the above named deponent do hereby verify that the contents of paragraphs 1 to 18 are true to my personal knowledge, and those of paras 2 to 18 are believed to be true on the basis of perusal of office records as well as information gathered and those of paras 19 to — are believed to be true on the basis of legal 21

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advice. Nothing material fact has been concealed and no part of it is false.

Deponent. *Ranu*

Lucknow,

Dated: 7/11/89 Bov. 1989.

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

Alka
(VK Chaudhari)

Addl Standing Counsel for the Central Govt
Counsel for the 6 Respondents.

Solemnly affirmed before me on

7/11/89

at 7:00 am pm by the deponent by

Shri VK Chaudhari, Advocate, High Court, Lucknow.

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

Om Prakash
Oath Commissioner. *7/11/89*

In the Hon'ble Central Administrative Tribunal,
Additional Bench Allahabad,
Circuit Bench at Lucknow.

RE-O
1

O.A. No. 269 of 1989 (L)

Awadhesh Narain DixitApplicant
Versus
Union of India & othersRespondents

REJOINDER

AT
17/1/1990

1. That para 1 of the counter affidavit is formal and call for no reply.
2. That the contents of para 2 (a) to 2 (j) of the counter affidavit are denied except the dates, illegal put off order followed by applicant's termination, filing of the O.A. 211/88 by applicant and allowing the same by Hon'ble Tribunal, further serving show cause notice and reply thereto, removal from service with immediate effect vide order dated 29-8-1989 and filing the instant original application. And it is further submitted that the applicant was appointed as E.D. B.P.M. Sursa in the year 1970 and not in 1978 as

319 ED 17/1/1990

stated in para 2(a) of the counter affidavit. The respondents without any care and fear have not applied their mind on the points stated in para 7 of the judgement in O.A. No. 211/88 A.M.D. v/s S.D.L. (c) Harde and simply removed the applicant from service whereas punishment awarded to him is already suspended by the Hon'ble High Court and ~~upper~~ appeal against the alleged conviction also has been admitted by the Hon'ble High Court as such the applicant has not been finally convicted and under such circumstances the impugned removal order dated 29-3-1989 (Annexure A-4) is wholly illegal and liable to be quashed by ~~this~~ this Hon'ble Tribunal.

3. That it is also submitted that the respondents have ordered removal from service vide order dated 29-3-1989 from retrospective effect i.e. 5-6-1987 which is absolutely impossible as the Hon'ble Tribunal vide order dated 2-6-1989 (a) O.A. No. 211/88 (Annexure A-1 to the application) has specifically mentioned :

"The applicant shall be deemed to have continued to be in service E.D.A. mail carrier or runner, entitled to all consequential benefits thereof."

The respondent no.4 arbitrarily and deliberately has removed the applicant from service as

319 E.P.M/T/EP

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monetary requirement was not fulfilled by the applicant.

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

5. That the contents of para 5 of the counter affidavit is denied and it is submitted that the applicant was falsely implicated in a criminal case and against the alleged conviction. Appeal has been admitted and punishment suspended by the Hon'ble High Court under such circumstances the matter becomes "Res-Integra" and as such the applicant does not stand finally convicted. Therefore, the order of removal (Annexure A-4) is illegal and liable to be quashed.

6. That para 6 of the counter affidavit is not denied.

7. That para 7 of the counter affidavit is denied and it is submitted that the competent authority should not have been vindictive. The Hon'ble Tribunal has been pleased to allow the Competent Authority to pass a fresh and fair order and not plainly arbitrary one.

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8. That the contents of para 8 of the counter affidavit is denied and it is submitted that once the Hon'ble Tribunal had quashed the termination order dated 5-6-1987 and deemed the applicant to be in continuous service, the respondents have no right to pass the put off or removal order from that very date. The applicant has been given no consequential benefits.

9. That the contents of para 9 of the counter affidavit is not denied.

10. That the contents of para 10 of the counter affidavit is denied and it is submitted that the heavy amounting to Rs.5000/- was demanded by respondent no.4 in the presence of one of the relatives of the applicant who had gone to him for requesting the respondent no.4 to have a kind view in the case of the applicant which was entirely false and concocted. The order of the Hon'ble Tribunal has not been complied with by the respondent no.4 because of his defiant attitudes.

11. That the contents of para 11 of the

21/1/1987

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counter affidavit is denied and it is submitted that the respondent no.6 has not at all considered the explanation and circumstances of the case. As such the order under challenge is absolutely illegal.

12. That the contents of para 12 of the counter affidavit is denied and it is submitted that the applicant's activities with regards to misconduct relating to service had never been pointed out by the Respondents. The misconduct of an employee for which he can be punished should directly relate to his employment, as has been sanctioned by the Hon'ble Supreme Court in the case of Glaxo in the year 1985.

13. That the contents of para 13 of the counter affidavit is denied and it is submitted that as stated in para 12 of the counter affidavit once the removal of the applicant was not on the ground of conviction, the question of disciplinary action against the applicant does not arise on the conviction by the first criminal court.

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14. That in reply to the contents of para 14 of the counter affidavit the contents of para 4 (1) of the original application are hereby reiterated and it is further submitted that respondents under no circumstance could have removed the applicant from service from that very date from which the Hon'ble Tribunal has been pleased to direct the applicant to be in continuous service.

15. That the contents of para 15 of the counter affidavit is not disputed.

16. That in reply to the contents of para 16 of the counter affidavit it is submitted that grounds taken by the applicant are very much cogent and tenable in the eye of law.

17. That the contents of para 17 of the counter affidavit is denied and in reply the contents of para 5 (5) of the original application are hereby reiterated as the same has been held by the Hon'ble Supreme Court in the case of Tulsi Ram Patel.

~~PA 9~~

18. That in reply to contents of para 18 of the counter affidavit, the contents of para 5 (6) of the original application are hereby reiterated.

19. That in reply to the contents of para 19 of the counter affidavit the contents of para 6 of the original application are hereby reiterated.

20. That in reply to the contents of para 20 it is submitted that the applicant is entitled for all the reliefs claimed in the original application before this Hon'ble Tribunal.

21. That the applicant is advised to state that the contents of counter affidavit except the contents of original application admitted by the Respondents, are wholly misconceived and under such circumstances the instant

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~~For Govt~~

original application being full of
merits, based on the cogent grounds
is liable to be allowed and the same may
kindly be allowed in the interest of
justice otherwise the applicant shall
suffer irreparable loss and injury.

Lucknow, dated;
January 15, 1990.

31/8/91/99/219

Applicant

Verification

I, the above named applicant hereby
verify that the contents of paras 1 to 19
of this rejoinder are true to my personal
knowledge and the contents of paras 20 to 21
are believed to be true on the basis of
legal advice by me, and that I have not
suppressed any material fact.

Lucknow, dated;
January 15, 1990.

31/8/91/99/219

Applicant.

I certify Smt. Swadhering
Horain who has signed
before me.

T. N. Tiran 15/1/90
School
Convenor for the Committee