

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

OA No. 274/89

CAUSE TITLE..... OF.....

NAME OF THE PARTIES S. D. Mishra.....Applicant

Versus

V.O. S. Verma.....Respondent

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CERTIFICATE

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

Chk on Dated 14-12-11

Counter Signed.....

Signature of the
Deputy Assistant

Section Officer/In charge

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW.

A.M.

INDEX SHEET

CAUSE TITLE O.A. No. 274 of 99 (L)

Name of the parties

S. D. Mishra

Applicant.

Versus.

Union of India & others

Respondents.

Part A.B.C.

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Bench Copy

B53 - B91

C. Paper

C92

Check
OK
24/6/91

S.O. (S)

Collected & Verified
21.05.92

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

Registration No. 274 of 1989(A)

Central Administrative Tribunal

Court

Date of Reg.

Date of Reg.

3/05/89

APPLICANT(S)

S.D. Mishra.

Deputy Registrar

REPRESENTANT(S)

Union of India & Others.

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 ? —

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, Vakalatnama 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 ? —

 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 date 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 ? —

Five Sets filed.

Particulars to be ExaminedEndorsement as to result of examination

11. Is the application/duplicate copy/spare copies signed ?

yes

12. Are extra copies of the application with Annexures filed ?

yes

a) Identical with the Original ?

yes

b) Defective ?

—

c) Wanting in Annexures

—

None, Preparation ?

—

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 indicated 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 ?

yes

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.

—

airush

274/198(4)

30.1.90 Hon. Justice K. NATH, V.C.
Hon. K. J. Raman, A.M.

On v. K. Chaudhary, learned counsel
for the respondents prays for and is allowed
one more opportunity to file a counter
affidavit within four weeks. Reply or
affidavit, if any, may be filed within two
weeks thereafter.

List for further orders on

28.3.90

OR

A.M.

VC

m.

RA filed today

2/3

28-3-90

vc sitting adj. to 17590

28/3

OR CA/RA have been
exchanged with affidavits
for condonation of delay

S. C.O

16/5/90

17.5.90

Hon. Mr. Justice K. Nath - V.C.
Hon. Mr. K. J. Raman - A.M.

Continued on 18.5.90

a

18.5.90

Hon. Mr. Justice K. Nath, V.C.
Hon. Mr. K. J. Raman, A.M.

Arguments heard. Judgment reserved

OR

Hon.

OR

V.C.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,

CIRCUIT BENCH

LUCKNOW

O.A. No. 274/1989(L)

Swami Dayal Mishra

...Applicant.

versus

Union of India & others

...Respondents.

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

Hon. Mr. K.J. Raman, A.M.

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

This is a petition under section 19 of the Administrative Tribunals Act, 1985 for quashing an order dated 29.8.88 (Annexure -1) whereby the petitioner was dismissed from service as Extra Departmental Branch Post Master (E.D.B.P.M.), post office Waidaha, district Sultanpur and also an order dated 22.7.89 (Annexure A-2) whereby his appeal against dismissal was dismissed.

2. The petitioner was working as E.D.B.P.M. and used to deal with Money Orders. On 21.4.86, a Money Order of Rs 500.00 for delivery to Ganga Ram Prajapati was received by him. It is said that on that very date the amount was misappropriated by the petitioner who also placed a forged voucher in the record purported to show that money had been paid to Ganga Ram Prajapati. Similarly on 22.5.86, he received a Money Order of Rs 500.00 to be delivered to Daya Ram Muneshwar Prasad. He is said to have mis-appropriated the amount on 27.5.86 and is alleged to have placed forged voucher of payment of money to Daya Ram Muneshwar Prasad.

3. Both the addressees of the Money orders are said to have made complaints of non payment of amounts to them. After

a preliminary enquiry, the departmental disciplinary proceedings were started against the petitioner. He was served with a charge sheet dated 11.11.87 containing the allegations as indicated above. The petitioner replied to the charge sheet. On 6.8.88 the Enquiry Officer submitted his report in which he stated to have found the petitioner guilty of the charge. On 29.8.88 the disciplinary authority, namely, Superintendent of Post Offices, respondent No. 2 passed the impugned dismissal order. An appeal preferred against the dismissal order was dismissed by the appellate authority, namely the Director of Postal Services, respondent No. 3 by Annexure -2 dated 22.7.89.

4. Counter and rejoinders were exchanged; We have heard Shri S.B.Mishra, learned counsel for the petitioner and Shri K.C. Sinha, the learned counsel for the respondents.

5. The first point raised is that on 11.1.88 the petitioner had applied for copies and inspection of 9 documents including the complaints, but while the two complaints and the Mail Peon Register were shown to him, the rest of the documents were neither shown, nor furnished to the petitioner. In respect of the Mail Peon Register, the further grievance is that pages 26 to 43 thereof which contained relevant extracts, had been replaced by bogus pages.

6. The statement in counter is that on the petitioner's own showing in para 6(v) of the petition, copy of the two complaints had been furnished to him; there was no replacement of the pages of the Mail Peon Register and that the rest of the documents were irrelevant and therefore were not made available to the petitioner.

7. It is significant that the petitioner had not filed

copy of the application by which he called for documents. He has also not stated the relevancy of each of the documents to enable this Tribunal to find whether they were relevant or not. It is admitted in the petition that the document had not been furnished on the grounds recorded by the Enquiry Officer that they were irrelevant. We are unable to agree with the learned counsel for the petitioner that he is entitled to obtain copies or inspect any document of his choice irrespective of its relevancy. The basic principle is that a delinquent employee is entitled as a right to receive copies of only such material as is purported to be used in the course of enquiry ; beyond that extent the delinquent employee must show to the satisfaction of the Enquiry Officer, that further document is relevant for purposes of enquiry and for enabling him to make a defence. The case of Surat Singh vs. S.R. Bakshi and others (1971 Delhi, 133) is not an authority for the proposition that a delinquent employee is entitled to inspect a document which is not shown to be relevant.

8. In respect of the Mail Peon Register, there is no cogent evidence of replacement of pages. The Enquiry Report which was admittedly handed over ^{to} the petitioner, has not been filed by the petitioner; the enquiry record was not in the hands of the Standing Counsel when we heard the case; a copy of the report which was with the learned counsel for the petitioner, was read over to us and we noticed that the Enquiry Officer had recorded cogent reasons for his view that pages of Mail Peon Register had not been replaced.

9. The second ground is that the report of preliminary enquiry made by B.R. Shastri was not furnished to the petitioner and therefore, the petitioner was handicapped

AS

in the disciplinary proceedings when B.R. Shastri was examined. The learned counsel for the respondents said that B.R. Shastri was not examined at all in the course of enquiry and that the preliminary enquiry report of B.K. Shastri was not a document for the use of the petitioner and indeed had not been used as piece of evidence in the course of disciplinary enquiry. There is nothing to show that B.R. Shastri was examined in the course of disciplinary enquiry. Moreover, the report of B.R. Shastri as an Enquiry Officer is not the same "thing" as B.R. Shastri's own statement which could be used, if at all, for the purposes of his cross-examination.

10. The third point raised is that the petitioner was not given reasonable opportunity of obtaining the services of defence assistant. It is admitted that one R.S. Chaubey was initially appointed as petitioner's defence assistant. The petitioner's grievance is that on 25.4.88 R.S. Chaubey did not appear and ^{when} the petitioner himself could not attend, the Enquiry Officer should have given an opportunity to the petitioner to appoint another defence assistant and should not have proceeded with the enquiry *ex parte* on 25.4.88. In the first place, there is no specific statement in the petition that he had been denied the opportunity to appoint Defence Assistant. The statement in para 6(VII) of the petition is that on 11.4.88, the Enquiry Officer proceeded to record the statement of witness-es in the absence of the Defence Assistant and again on 25.4.88 ^{when} the petitioner was absent a written request for adjournment was rejected so as to enable him to appoint another defence assistant. In para 6(viii) it is stated that the Enquiry Officer ordered the petitioner to defend his case personally without any legal or other assistance. The allegation

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were denied in para 13 and 14 of the counter. This part of the case was dealt with by the disciplinary authority in his order Annexure 1. It was stated that after R.S. Chaubey, the defence assistant, did not appear, the petitioner appointed Ram Lakan Singh for his defence. It is plain enough that the petitioner had availed the services of two defence assistants and if they did not turn up, he had only to thank himself. No fault can be found with the directions of the Enquiry Officer that the petitioner should defend his case personally in the event of failure of defence assist to make appearance. There is nothing to show that the petitioner made any further application for appointing a third defence assistant. The appellate authority has recorded that proceedings had to be completed within the time schedule and therefore, there was nothing ~~to~~ wrong when the enquiry officer proceeded *ex parte*. According to the learned counsel for the petitioner, the time fixed in the circular issued by the government is 120 days. That only shows that the enquiry was expected to be concluded speedily the fact that it could be completed after several months neither vitiated the enquiry, nor disentitled the enquiry officer to proceed in the absence of the delinquent employee.

10. The next ground urged is that the motion for adjournment on 11.4.88 and 25.4.88 should have been allowed. A reading of the enquiry report at the Bar shows that it contained acceptable grounds for proceeding *ex parte* on both these dates.

11. The fourth point raised is that the order (Annexure-1) passed by the disciplinary authority ~~as~~ also the order (Annexure-2) of the appellate authority are non-speaking

orders. The contention is not quite correct.

12. In the order Annexure 1, a substance of the proceedings taken by the enquiry officer is set out. It is stated that the enquiry officer held 17 sittings in which he followed prescribed the procedure. He then went on to record that he had thoroughly and carefully studied the charge-sheet, the oral and documentary evidence laid during the enquiry, defence statement of the petitioner and the summary of evidence furnished by the Presenting Officer as well as the defence assistant. He mentioned that on such consideration he fully concurred with the well considered findings of the Enquiry Officer. He observed that having regard to the seriousness of the proved charges, the petitioner was liable for severe punishment and therefore, he ordered dismissal of the petitioner. The contention of the learned counsel for the petitioner that the disciplinary authority had not discussed ^{is} findings as such, technically correct; but the learned counsel for the respondents has urged that where the disciplinary authority fully agreed with the Enquiry Officer's report, it was not necessary for the disciplinary authority to give detailed reasons, which, essentially would only be a repetition of the reasons recorded by the Enquiry Officer. It must be ~~been~~ mentioned immediately that the petitioner had not urged that the Enquiry Officer did not record reasons. Apparently, the Enquiry Officer recorded detailed reasons and since the disciplinary authority entirely agreed with them after a perusal of the entire material independently, it does not appear necessary for the disciplinary authority to have recorded its own reasons. In the case of State of Madras vs. A.R. Srinivasan (1966 Supreme Court 1827) it has been held that where the punishing authority agrees with the findings

of the enquiry authority, it is not necessary to record reasons; if he differs, reasons must be recorded.

13. The appellate order (Annexure -2) also cannot be said to be a non-speaking order. Indeed the appellate authority has specifically set out the various points raised by the petitioner in his memo of appeal including the objection that the disciplinary authority did not discuss the evidence. Since he agreed with the findings of the disciplinary authority he was also not expected to record an appreciation of evidence by himself independently. He has dealt with the points raised in appeal and the appellate order does not suffer from any infirmity.

14. These are all the points raised in this case. The result is that the petition should fail.

15. The petition is dismissed. Parties shall bear their own costs.

W.M. Alway

A.M.

W
6.7.90
V.C.

Dated May, 1990.

This judgement could not be pronounced at the Lucknow Circuit Bench by accidental omission when I was on tour there ~~recently~~ last. To avoid further delay the judgement is being pronounced at Allahabad today. This office will issue copies of judgements to the concerned parties within three days and thereafter send the record (containing the judgement and office copy of letter of despatch of judgement) to the Lucknow Circuit Bench for information and necessary action.

W
6.7.90
Vice Chairman

Dated the 6th July, 1990.

Central Administrative Tribunal
Circuit Bench Lucknow
Date of filing 3/10/89.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW, DATE OF 3/10/89.

CIRCUIT BENCH, LUCKNOW.

O.A. NO.

274

Deputy Registrar(J)
(L) OF 1989.

BETWEEN:

Swamy Dayal Mishra Applicant.

AND,

The Union of India & Two Others Respondents.

I N D E X

Sl. No.	Particulars of documents	Pages From	To
1.	Application	1	- 10
2.	Annexure-I	11	- 12
3.	Annexure-II	13	- 14
4.	Postal Order	15	
5.	Power of the Counsel	16	

Filed today:

S. B. Mishra

03/10/89 Advocate

Dated: 25.9.1989 with 3 copies for
respondents counsel
for the
03/10/89

Lucknow.

S. B. Mishra
(S. B. MISHRA
ADVOCATE,
COUNSEL FOR THE APPLICANT.

Noted for 20/10/89
S. B. Mishra
03/10/89

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, LUCKNOW.

O.A. NO.

274

(L) OF 1989

Between

Swamy Dayal Mishra Applicant.

Versus,

The Union of India & 2 Others Respondents.

APPLICATION U/S 19 OF THE ADMINISTRATIVE TRIBUNALS
ACT, 1985.

1. Particulars of the Applicant :

- (i) Swamy Dayal Mishra.
- (ii) Son of, Late Shri Gurusharan Mishra
- (iii) Lastly employed as Extra Departmental Branch Post Master at waidaha, B.O., District- Sultanpur;
- (iv) Since no more in service, there is no office address now.
- (v) Village: Waidaha, Post: Waidaha, B.O., District- Sultanpur.

2. (i) Union of India, through the Secretary, Telecommunication (Postal), Parliament Street, New Delhi.

(ii) Superintendent of Post Offices, Sultanpur.

(iii) Director of Postal Services, Allahabad.

3. Particulars of the order against which this application has been made:-

(i) The order dated 22.7.89 passed by the respondent No.3 but communicated to the applicant on 8.9.89, dismissing the appeal dated 12.9.88 preferred by the applicant against the order dated 29.8.1988, communicated to the applicant on 3.9.1988, by which the respondent No.2 had dismissed him from service after a departmental inquiry regarding certain charges of misconduct against him.

Handwritten signature

(ii) Subject in brief :

The applicant was, at the relevant times, posted as Extra Departmental Branch Post Master at waidaha, B.O. District- Sultanpur. During this period, a money order No. 679 dated 19.5.86, for rupees Five Hundred only, payable to one Dayaram Muneshwar Prasad, was received from the Pant Nagar P.O. at the waidaha Branch Office on 22.5.86 when the applicant was posted there as an E.D. Branch Post Master for abour fourteen years at that time. This Money Order was delivered to the E.D. mail peon, Ram Sunder, who returned it as unpaid on two days. It was again given out in delivery to the said mail peon on 27.5.86, when it was paid to the payee and the paid Voucher returned to the applicant upon which he accounted for it.

Another money order No. 1546 dated 16.4.86 for Rupees Five Hundred, payable to one ~~Gangaram~~ Gangaram Prajapati, issued by Swamy Ram Tirth Nagar, New Delhi, was received on 21.4.86 at the Branch Office. It was given out in delivery to the said Mail Peon, Ram Sunder, who paid it to the Payee on the same day and returned the paid voucher to the applicant who then accounted for it.

Kawal Mishra
The truth of the matter is that the applicant was not at any fault in any manner and an absolutely false case was cooked up by his 'Pattidar' Ram Shabda Mishra, who is a Postal employee and was at the relevant times working as S.D.I.(P) in Sultanpur Division. In order to get his real brother Shri Ram Kawal Mishra employed in place of the applicant, he persuaded the respondent No.2, that is, the Supdt. of Post Offices, Sultanpur to start proceedings under rule 8 of the E.D. Conduct Rules, read with rule 14,

of the C.C.S. (C.C.A.) Rules, 1965 for his alleged absence for one day a few years back in which he did not succeed. Shri Ram Shabda Mishra did not give up his efforts and succeeded in persuading the respective payees of the said two money orders to deny their signature or Thumb impression on the paid vouchers and to say that these two money orders were not paid to them and with the support of the mail Peon and other persons concerned, he also succeeded in getting the numerical figures in the register of the postman altered and even removing the pages of this register or replacing them with forged ones. In this way Shri Mishra influenced the Inquiry Officer as also the officiating disciplinary authority and got the order of the dismissal passed against the applicant and then he managed to get his said younger brother appointed to this post.

4. The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Hon'ble & Tribunal.
5. The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1986.
6. FACTS OF THE CASE :
 - (i) That as already stated above, the applicant was working as an E.D. B.P.M. at Waidaha B.O., District- Sultanpur, when a Money Order for rupees Five Hundred was received for payment to one Dayaram Muneshwar Prasad on 22.5.86. This Money Order was issued in delivery to the Postman Ram Sunder who returned it undelivered on two days. It was again given out in delivery to him on 27.5.86 when it was paid to the payee and the paid voucher returned to the applicant, who

duly accounted for it. Another Money Order for rupees ~~dated~~ Five Hundred ~~dated~~ dated 16.4.86 was received by the applicant for payment to One Gangaram Prajapati on 21.4.86 at the B.O. This was also given in delivery to the said Postman who paid it to the payee the same day and returned the paid voucher to the applicant who then accounted for it.

(ii) That it appears that the above said two payees of the above said two money orders were persuaded to deny their signatures and thumb impressions on the money order vouchers and to state that they had not been paid the money in question, by one Ram Shabda Mishra, an employee of the department who was interested in and ultimately got his younger brother Ram Kawal Mishra appointed as E.D. B.P.M. at Waidaha in place of the applicant, after securing the dismissal of the applicant from service with his influence with the Inquiring Officer and the then officiating disciplinary authority, namely, the respondent No. 2.

(iii) That the applicant was first put off duty without contemplation of any disciplinary inquiry against him, but thereafter a long time, a disciplinary proceeding was drawn against him under service rules for E.D. Staff, rule 8 on the charges that he got fictitious and forged signatures and thumb impressions obtained on the said two money order vouchers and ~~misappropriated~~ misappropriated the said amounts, thereby violating rules 10 and 109 of the B.O. rules as also rule 17 of the Service Rules for E.D. Staff.

(iv) That the disciplinary inquiry was carried out in a most improper and illegal manner in which the principles of natural justice, fair play and propriety were thrown to the winds, vitiating the whole inquiry on which the order of

dismissal could not be founded or supported.

(v) That the applicant had submitted a list of nine additional documents which were required for the preparation of his defence on 11.1.1988 out of which the Inquiry Officer allowed only two documents, which were copies of the complaints of the remitters of the two money orders in question. For the rest of the documents demanded for inspection, namely, documents at nos. 3 to 9, the Inquiry Officer stated that they were irrelevant and as such could not be made available for inspection. However, he did not give any reason for saying so. Further, the inquiry report of Shri B.R. Shastri, S.D.I. (P), who had made the fact finding inquiry and was appearing as a state witness against the applicant, was a very material and important document, for cross-examining him but this highly essential document was not supplied to the applicant. In this connection it may be referred that in Surath Singh Vs. S.R. Bakshi, A.I.R. 1971, Delhi, 133(135), the Hon'ble High Court has observed that the S.P.S. applicant, has a legal right to inspect even those documents which are not relied upon by the prosecution as these may be essential for the preparation of his defence. If such an inspection, as desired by the applicant is refused, his non participation in the inquiry is justified and vitiates the proceedings. Thus, there has been an apparent denial of reasonable opportunity, as required under Article 311(2) of the Constitution of India and therefore the order of dismissal is not sustainable and is liable to be quashed.

(vi) That ~~although~~ the document namely, copy of remitter's complaint, which had been permitted to be shown, was never shown. Similarly, the copy of the complaint of the remitter of the second money order which had been

permitted to be shown was also not shown on the grounds that they could not be obtained or procured.

(vii) That even while the position of the documents required for inspection by the applicant was as discussed above, the Inquiry Officer, without complying with sub rule(2) of rule 14 of the rules for the Extra ~~Expt~~ Department postal agents, proceeded ahead and started recording the statements of the state witnesses on 11.4.88 even in the absence of the defence assistant on that date and then again on 25.4.88, when the applicant (Delinquent) was absent and his written ~~s~~ request for adjournment, so as to be able to appoint another defence assistant, was turned down without any cogent reason and the inquiry proceeded *ex parte*.

(viii) That furthermore, the Inquiry Officer was so much prejudiced against the applicant that he ordered the applicant to defend his case personally without any legal or other help from any assistant. The order of dismissal based on such a bad inquiry is wholly illegal and cannot be sustained. In this connection the two cases may please be noted which support the applicant's stand:-

(a) A.I.R. 1961, S.C. 51(State of U.P. Vs. Babu Ram Upadhyaya)

(b) A.I.R. 1974, S.C. 2192(Para-3) (Shamsher Singh Vs. The State of Punjab)

(ix) That the Disciplinary Authority (respondent No.2) failed to note and appreciate and did not discuss the circumstances under which the E.D. M.P. register was tampered with, the numericals in the figures of return were altered by over-writing etc. and the pages from 26 to 43 were removed. After ignoring these material points, the Inquiry Officer passed the order of dismissal.

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(x) That the inquiry is also vitiated on the ground that the S.W.'s named in Annexure-IV of the Charge sheet were examined in the absence of the applicant as also his defence assistant, who under extenuating circumstances could not attend the inquiry and had applied for adjournment. After recording the statements of these witnesses *ex parte*, the Inquiry Officer himself cross-examined these witnesses and only sent the copies of these ~~witnesses and only sent the copies of these~~ statements to the applicant by registered post as per his inquiry report dated 6.8.1988 on page 3. However, this fact does not find place in proceedings of the inquiry and makes the whole affair a fishy one. The inquiry has been conducted in a partisan, biased and prejudicial manner and is somewhat peculiar and absurd and renders the inquiry meaningless.

(xi) That although there was no rebuttal *of* the statement of defence of the applicant, yet it was not considered and deliberately ignored.

(xii) That the finding of the Inquiry Officer at pages 8 and 9 of his report that the summary in the postman's register was prepared in the handwriting of the applicant and that the postman had made these corrections in the presence of the applicant, are perverse as they do not find any support from the record, and these considerations were only presumptive and could not be based as grounds for passing the order of dismissal.

(xiii) That the finding of the Inquiry Officer that the applicant should have produced his defence witnesses to prove his innocence is also perverse as the allegations are required to be proved to the hilt by the person alleging them against the S.P.S. concerned. In such cases it is none of the duties of the defence to prove that the S.P.S. is innocent.

(xiv) That after the application for adjournment was allowed by the Inquiry Officer, No S.W. should have been examined by the Inquiry Officer, but in this case, the Inquiry Officer has done so and has vitiated the inquiry.

(xv) That the Inquiry Officer failed to peruse the record of the case before passing the order of dismissal in as much as he did not consider a notary affidavit, filed by the applicant and the offer of the applicant to reimburse the department with rupees One Thousand by crediting his personal money.

(xvi) That the Inquiry Officer has ignored the fact that the applicant had put in unblemished service in the department during the last twenty years and had earned the President of India's certificate as also that of the Auditor General's and that the present was a case maliciously cooked up by the said Ram Shabda Mishra, S.D.I.(P) with the support of the payee's of the money orders and the postman concerned so that his said brother could be appointed to the post that was occupied by the applicant and he has succeeded in his evil designs.

(xvii) That the applicant appealed against this order of dismissal dated 29.8.88^{to} to the respondent No.3 who, without considering the merits of the case, the unacceptability of the inquiry report and the order of dismissal based upon this inquiry which was wholly ~~vitiated~~ vitiated, dismissed the appeal, thereby giving rise to this application.

(xviii) That the appellate authority has not given any valid or convincing reasons for turning down the vital issues raised by the applicant and is neither a well discussed nor a speaking order.

Leave Application

7. RELIEFS SOUGHT :

(i) The order passed in appeal by the respondent No.3 dated 22.7.89 but communicated to the applicant on 8.9.89 dismissing the appeal that had been filed against the order of dismissal of the applicant from service dated 29.8.88 by the respondent No.2 but delivered on 3.9.88, be quashed or set aside and the appeal be allowed quashing or setting aside the order of dismissal dated 29.8.88 delivered on 3.9.1988.

(ii) The applicant be paid all his salary, allowances and other permissible dues for the entire period from the date he was put off duty till the date of his actual reinstatement to the post of E.D. B.P.M. at waidaha B.O. District- Sultanpur.

(iii) Costs of these proceedings be awarded to the applicant and against the respondents.

8. No interim order is prayed for.

9. Details of the remedies exhausted.

The applicant filed his appeal before the respondent No.3 against the order of his dismissal from service dated 29.8.88 delivered on 3.9.88 passed by the respondent No.2 and on the rejection of this appeal, he is filing this application before this Hon'ble Tribunal.

10. That 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 this Hon'ble Tribunal.

11. That the application fee of Rs. 50/- is being paid through a Postal Order No. DD 777175 issued by the ⁴ High Court Branch Post Office, Lucknow on 03.10.89 and payable at the G.P.O., Lucknow.

for and on behalf of

12. That an index in duplicate containing the details of the documents to be relied upon is enclosed.

13. List of enclosures:-

(i) Photostat copy of the order of dismissal dated 29.8.88 delivered on 3.9.88 passed by the respondent No. 2 (Annexure-I).

(ii) Order dated 22.7.89, delivered on 8.9.1989 passed by the respondent No.3, dismissing the appeal that had been filed against the above noted order of dismissal from services (Annexure-II).

IN VERIFICATION :

I, Swamy Dayal Mishra, aged about 55 years, s/o Late Shri Guru Sharman Mishra/o village: Waidaha, P.O.- Waidaha B.O., District- Sultanpur, do hereby verify that the contents of paragraphs 1 to 13 above are true to my personal knowledge and belief and that I have not suppressed any material facts.



(SWAMY DAYAL MISHRA)

Dated: 25.9.1989.

APPLICANT.

Lucknow.

⑥

राजत सरकार, संचार मंत्रालय

डाक विभाग

कार्यालय:- अधीक्षक डाकघर, सुलतानपुर मौजूदा, सुलतानपुर-223001।

फैसले नं:- एक। फ़िस-२। कैदस। ८०-४६। डिस सुलतानपुर २९/८८

श्री स्वामी द्याल मिश्र अ० विं शाखा डाकघर बैदहा
 सुलतानपुर द्येवा वारिता के विरुद्ध इस कार्यालय के तमसंघक
 ज्ञापन दिनांक ११.११.८७ के अधीन अ० विं अभिकर्ता आचार स्वं सेवा०
 नियम १९६४ के नियम ४ के अन्तर्गत अनुशासीनक कार्यवाही आरम्भ की गई
 थी। उक्त ज्ञापन के साथ कर्मचारी के विरुद्ध आरोपित लांछनों का विवरण
 व इनके समर्थन में अधिकार अधिकार कराचार का विवरण तथा उन प्रत्येकों
 प्रत्येकों व साक्षियों की सूची जिनके हारा आरोपित लांछनों को सिद्ध
 करना प्रस्तावित किया गया था भी अनुशासीन अनुलग्न की गई थी।
 तंदिग्धि लोक सेवक के विरुद्ध अधीकर्ता लगाये गये थे -

1- यह कि उक्त श्री स्वामी द्याल मिश्र ने दिं २२.५.८६ से
 २७.५.८६ की अवधि में शाखा डाकघर बैदहा के छद पर कार्य करते हुए
 दिं २२.५.८६ को शाखा डाकघर में अदोयगी हेतु प्राप्त पंतनगर धनादेश
 रुपया ६७९ दिं १९.५.८६ मूल्य ५००/- रु का भुगतान इसके प्राप्तक
 श्री द्याराम मुनेश्वर पुसार निवासी ग्राम बन्नई डाकघर बैदहा जन्मद
 सुलतानपुर को न कराकर करके दि.० २७.५.८६ को धनादेश फार्म पर प्राप्त
 कर्ता का जाली ज़ूगठ की अप लगाकर /लगवाकर स्वं इस जाली ज़ूगठ को
 को फर्जी व्यक्ति द्वारा प्रमाणित कराकर तथा फर्जी व्यक्ति द्वारा स्पष्टों
 के निशान भुगतान की गवाही कराकर धनादेश को रकम का भुगतान स्वयं
 प्राप्त कर लिया। इस प्रकार कर्मचारी ने शाखा डाकघर नियमावली के
 नियम १० एवं १०९ में निर्धारित प्रैक्षिया को उपेक्षा की तथा तदैव सत्य
 निष्ठा व कर्तव्य परायणता न बनाये रखकर अ० विं अभिकर्ता आचार
 स्वं सेवा० नियम १९६४ के नियम १७ का उल्लंघन किया।

2- यह कि उक्त श्री स्वामी द्याल मिश्र ने दिं २१.४.८६ को पूर्वोक्त
 कार्यालय में कार्य करते हुए दिं २१.४.८६ को द्वितीय धनादेश राम
 तोर्ध नगर धनादेश संख्या ११६६ दिल्ली धनादेश सं. १५४६ दिं १८.४.८६
 मूल्य १०० स्पष्ट इसके प्राप्त कर्ता श्री गंगाराम प्रजापति निवासी ग्राम
 मलवा डाकघर बैदहा सुलतानपुर कराकर /करके दिनांक २१.४.८६ को
 दो धनादेश फार्म पर प्राप्तके जाली दस्तावज़र /बनवाकर तथा फर्जी व्यक्ति
 को गवाही लिखकर /लिखवाकर धनादेश को रकम का भुगतान स्वयं प्राप्त
 कर लिया। इस प्रकार कर्मचारी ने शाखा डाकघर नियमावली के नियम १०
 व १०९ में वर्णित प्रावधनों की अवधेना की एवं सत्य निष्ठा व कर्तव्य
 परायणता को तिलांजिल देकर अ० विं अभिकर्ता आचार स्वं सेवा०
 नियम १९६४ के नियम १७ के विरुद्ध आवरण किया।

True Copy
 Sudhakar
 25/9/89

2- संदिग्ध लोक सेवक के विरुद्ध आरोपित लाभों की व्यापक विवेचना हेतु सर्व पुथि श्री राम सुरेश मिश्रा डाक सहायक सुलतानपुर को जाँच अधिकारी तथा श्री श्री०पी० सिंह तत्कालीन उष्मण्डलीय निरीक्षक डाक्षर, मुसाफिरों द्वारा नियुक्त किया गया था। तत्यश्चात् संदिग्ध लोक सेवक द्वारा प्रस्तुत प्रतिवेदन को स्वीकार करके सियाराम बर्मा उपडाक्याल अमेरी को विवेचना अधिकारी एवं श्री जी०पी० सिंह को अन्य कार्यों में अतिव्यस्तता को ध्यान में रखकर श्री आच्छा प्रसाद तिवारी कार्यालय सहायक मण्डलीय कार्यालय सुलतानपुर को प्रस्तुतोकरण अधिकारी नियुक्त किया गया। संन्दिग्ध, जनसेवक ने भी अपने मामले के बचाव के लिए सर्व पुथि श्री आर०सृष्ट० घौबे सेवा निवृत्त उपडाक्याल माधोगंज० प्रतापगढ़० के नामंकित किया और तदुपरान्त श्री घौबे द्वारा जाँच कार्यवाही में भाग न लेने पर श्री राम लखन सिंह सहायक डाक्याल श्रीलेखा० प्रतापगढ़० की सेवाओं का उपयोग अपने बचाव सहायक के स्वयं में किया। जाँच अधिकारी ने 17 बैठकों में निहित जाँच प्रतिया का पूर्णतया अनुसरण करके तथा संदिग्ध लोक सेवक को अपने बचाव हेतु समुचित व न्यायोचित अवसर सुलभ कराकर जाँच कार्य को संवादित किया। और दिनांक 6-८-८४ को अपनी जाँच आच्छा मण्डलीय कार्यालय को प्रस्तुत करदी।

3- मैं आरोप पत्र जाँच के द्वारा न प्रस्तुत किये गये मौखिक व पुलेखीय साक्ष्य, संदिग्ध लोक सेवक द्वारा प्रस्तुत किया गया लिखित बचाव विधान तथा प्रस्तुतीकरण अधिकारी व बचाव सहायक द्वारा प्रस्तुत किये गये संक्षिप्त साक्ष्यों का गठन व सावधानी पूर्वक अध्ययन किया है और इस सुस्थापित निष्कर्ष पर पहुँचा हूँ कि कर्मचारी ने अपने दृग्भिरुप व निन्दनीय आवरण से विभाग की छाँट उपीकृत को मरिन तथा पारम्परिक विश्वसनीयता को कलंकित किया है। मैं जाँच प्राधिकारी के सुविधारित जो के सेवक का नैतिक अक्षम अधिकारित विधान से पूर्ण ल्येण तद्वमत हूँ। निस्तन्त्रित प्रत्यत मामले में संन्दिग्ध भी पुकार को सहानुभूति पूर्ण अथवा उदारतापूर्ण दृष्टिटकोण अनाना रक भयंकर भूल व अरिमार्जनीय निर्णयात्मक वृक्त होगो जिसके फलस्वरूप अक्षयनीय व अपरिमेत विभागोय क्षति जो तभावना से इनकारनहों किया जा सकता है। पूर्णल्येण तिद्व आरोपों की गम्भीरता के परिप्रेक्ष्य में कर्मचारी कंठोरतम व अधिकतम दण्ड का भागी है।

आदेश

=====

मैं मुकुट बिहारी बाजपेयी, अध्याक्षक डाक्षर, सुलतानपुर श्री त्वामीक्ष्याल मिश्र शाखा डाक्याल बैद्धा सुलतानपुर श्रीसेवा वारित दो तात्कालिक प्रभाव सेवा से बर्खास्त करने के आदेश पारित करता हूँ।

30/01/84

श्री० बौ० बाजपेयी०
अध्याक्ष डाक्षर

सुलतानपुर सुण्डल सुलतानपुर

22800।

श्री स्वामो द्व्याल मिश्र अ० विं०
शा० डाल बैद्धा श्रीसेवावारित दो सुल० जाँच आच्छा की एक प्रतिरिक्षण है

2-3. कर्मचारी की व्यष्टिकतगत पत्रावलो/ पोस्ट्वार्स्टर सुलतानपुर

4-5. प्रप. म० निर्देश डाक्षर सुलतानपुर श्रीउल्लार०

Recd
A-1

Govt. of India
Ministry of communication
Department of Posts

Annexure II

(13)

A24

Office of the Director Postal Services Allahabad 211001

No: Vig/APP-ED-3/89/2
dated at Allahabad the, 22.7.89

Appellate Order

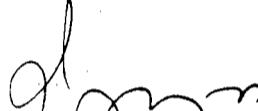
1. This is in context of appeal dated 12.9.88 preferred by Shri Swami Dayal Misra ex-EDBPM Waidaha (Sultanpur) against the penalty of dismissal imposed vide SPOs Sultanpur memo no. F/Misc. 2/Waidaha/87-88/disc. dated 29.8.88 as a consequence of disciplinary proceedings against the appellant in r/o allegations regarding non-payment of MO 679 & 1543 for Rs. 50/- each to the payees and showing the MOs as paid to the payees in the office records.
2. The appellant put forward the following pleas/arguments in the appeal for consideration.
 - (i) That he was allowed the inspection of all the additional documents, thus, depriving him of the reasonable opportunity of defence.
 - (ii) That disciplinary authority did not discuss the evidence to arrive at its conclusions. The punishment order is not a speaking order, hence liable to be set aside.
 - (iii) The I.O. conducted the enquiry in a peculiar manner particularly in recording the statements of S.W. named in annexure 4 of the chargesheet and he failed to appreciate the evidence on record. He acted against principles laid down for enquiry as the SWs should not have been examined in view of the application of the appellant for adjournment. The enquiry report is, therefore, vitiated.
 - (iv) The punishing authority acted under pressure to punish the appellant. He did not consider the submissions regarding appellants' victimisation as a result of village politics especially headed by Shri R.S. Mishra S.D.I. (P) for appointment of his brother to the post of the appellant.
3. I have carefully examined the concerned records/documents and analysed the facts and circumstances of the case vis-a-vis the appeal. It is true that the appellant was not shown some of the additional documents as demanded by him, but, this cannot be taken as the denial of reasonable opportunity of defence, because, the appellant cannot claim an unlimited right to the documents. The listed and relied upon documents were made available to him in addition to some of the additional documents required by him. The enquiry officer conducted the proceedings as per laid down procedure. Since the proceedings are required to be

True Copy
Smt. P. D.
25/9/89

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completed within the stipulated time limit, the I.Q. is, therefore, under obligation to adhere to the time schedule and to proceed ex parte in case he thinks it proper. The proceedings cannot, therefore, said to be suffering from the infirmities as pointed out by the appellant. The disciplinary authority took into a/c the evidence on record and recorded its findings accordingly in the punishment order. The punishment order is, therefore, not suffering from any infirmity. The evidence on record, facts and circumstances of the case reveal that the appellant is guilty of the charges. He has not put forward any solid plea/arguments to disprove the charges. I, therefore, do not find substance in the pleas/arguments of the appellant to absolve him of the charges.

4. In view of the foregoing discussion and the records/documents and facts and circumstances of the case the appeal is rejected.


(P.R. KUMAR)

Director Postal Services

Allahabad-211001

To

Shri Swami Dayal Mishra
Ex-ED BPM Waidaha
(through SPOs Sultapur)

થ અદાલત શ્રીમાન्
[વાદી અપીલાન્ટ] શ્રી
પ્રતિવાદી [રેસ્પાન્ડેન્ટ]

Circuit Bench: Lucknow

महोदय

प्रतिवादी [रेस्पाडेन्ट]

માર્ગિનાની રિસાર્ચ

ब्रातवादा [स्पृष्टि]

Swamy Dayal Mishra

वकालतनामा



અન્ટ) Applicant

VS.

बनाम

बनाम
Name of India & 2028.

प्रतिवादी (रेस्पाडेन्ट) *Respondents*

नं० मुकद्दमा

सन्

पेशी की तां

୧୯ ମେୟର

O. A. NO. (L) of 1989.

ऊ. अ. नं. ८५७८०१. ऊ. अ. नं. ८५७८०१.
 ऊपर लिखे मुकद्दमा में अपनी ओर से श्री..... S/শ্রী Shashi Bhal Mishra, Advocate
 And Shashikanta Mishra, Advocate, both 2/0 ८०८/५९ Rai Behan
 Lal Road, Lucknow - 7 महोदय
 एडवोकेट

नाम अदालत ...
मुकद्दमा ने० ...
नाम फरीकैन ...

को अपना बकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे
देवा हूं इस मुकद्दमा में बकील महोदय स्वयं अथवा अन्य बकील द्वारा
जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल
करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया बसूल
करें या सुलहनामा व इकबाल दाबा तथा अपील निगरानी हमारी ओर
से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा
उठावें वा कोई रुपया जमा करें या हारी बिपक्षी (फरीकसानी) का
दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती)
रसीद से लेवें या पंच नियुक्त करें—बकील महोदय द्वारा की गई वह
सब कार्यवाही हमको सर्वथा स्वीकार है और होणा में यह भी स्वीकार
करता हूं कि मैं हर पेशी पर स्वयं वा किसी अपने पैरोकर को भेजता
रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो
जाता है उसकी जिम्मेदारी मेरे बकील पर नहीं होगी इसलिए यह
विकालतबमा लिख दिया प्रमाण रहे और समय पर काम आवे ।

25986 Accepted

Accepted
Shaileshka Mehta
25/9/84 * 1900

मन पर कान लावा ।

दिनांक 25 महीना September सन् १९८९ ई०

स्वीकृत

Sl No. 6
20/10/89

22

ब अदालत श्रीमान्
(वादी) अपीलान्ट
प्रतिवादी [रेस्पाइन्ट]

Central Administrative Tribunal
Circuit Bench, Lucknow.

महोदय

वकालतनामा

टिकट

वादी (अपीलान्ट)

Swami Jayal M.

बनाम ~~कृष्ण गुप्त~~ प्रतिवादी (रेस्पाइन्ट)

नं० मुकद्दमा २७६ सन् १९८९(२) पेशी की ता० २०.१०.१९८९

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

20/10/89 १९.१२.८९

~~Dr. Robert~~ V.K. Chanchani कानूनी वकील
Adv. Cm. Secy. Standing Counsel महोदय
एडवोकेट

नाम अदालत
नं० मुकद्दमा फर्मन
नाम

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रुपया जमा करें या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसको जम्मेदारी मेरे वकील पर नहीं होगी इससिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

Accepted

साक्षी (गवाह)

साक्षी (गवाह)

St. G. Sultankhan
for 06

दिनांक

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महीना

(०)

सन् १९८९ ई०

10/2 A28
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH : ALLAHABAD.

.....
CIVIL MISC.APPLICATION NO. 120 OF 1990 (S)

ON BEHALF OF

UNION OF INDIA & OTHERS.

APPLICANTS |
RESPONDENTS.

IN

O.A. NO. 274 of 1989 (L)

Swamy Dayal Mishra.

applicant

Versus

Union of India & others.

respondents.

To

The Hon'ble the Vice Chairman and His
Companions Members of the aforesaid Tribunal.

The humble application of the abovenamed
MOST RESPECTFULLY STATES :

1- That in view of facts and circumstances
stated in the accompanying counter affidavit, it is in
view

A2

2.

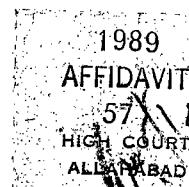
the interest of justice that the relief claimed by the petitioner is rejected.

P_R_A_Y_E_R

WHEREFORE, this Hon'ble Tribunal may kindly be pleased to reject the relief claimed by the petitioner, otherwise respondents would suffer irreparable loss.

Dt/-February , 1990.


(K.C. SINHA)
ADDL. STANDING COUNSEL
CENTRAL GOVT.
COUNSEL FOR THE RESPONDENTS.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH : ALLAHABAD.

.....

COUNTER AFFIDAVIT

ON BEHALF OF THE RESPONDENTS

IN

O.A. NO. 274 of 1989 (L)

Swami Dayal Mishra

applicant

Versus

Union of India & others.

Respondents.

Affidavit of D. P. Gahlot

aged about 49 years/son of Shri
Sri Ram Upendra Gahlot
D. P. Gahlot, Superintendent

of Post Offices, Sultanpur Dn.

(Deponent).


I, the deponent abovenamed do hereby

solemnly affirm and state on oath as under :

1- That the deponent is Superintendent of Post Offices, Sultanpur Division, Sultanpur and has

A31

2.

been deputed to file this counter affidavit on behalf of respondents and is well acquainted with the facts deposed to below.

2- That the deponent has read the petition and has understood the contents therein fully and is in a position to reply the same.

3- That before giving a parawise reply to the petition, the following facts are asserted in order to facilitate this Hon'ble Tribunal in administering justice :

Extra

a/- That while the petitioner was working as Departmental Branch Postmaster, Vaidaha, a complaint was received in respect of money order no. 679 dated 19th May 1986 for Rs. 500/- which was to be payable to Sri Daya Ram Muneshwar Prasad alleging therein that the same has not been paid to payee. A preliminary enquiry was held and it was revealed that the money order was issued to Extra Departmental Mail Peon Shri RamSunder Singh by the petitioner for payment to the payee. The said money order was returned by the Extra Departmental Mail Peon to the Branch Postmaster as unpaid. On 27th May 1986, the said



3.

money order was again issued to Extra Departmental Mail peon and again it was returned by him as unpaid to the petitioner with cash. But fraudulently the petitioner shown the said money order as paid ~~xxxxxx~~ and charged in Money Order Paid account of Branch Office, Vaidaha on the same date, i.e. 27th May 1986.

b/- That in like manner another money order no. 1543 dated 16th April 1986 for Rs.500/- which was to be paid to Sri Ganga Ram Prajapati, was received in the said Branch office on 21st April 1986 and the same was given to Extra Departmental Mail Peon Shri Ram Sunder Singh for payment on 21st April 1986, but the said money order was returned by the Extra Departmental Mail Peon with the remark that payee could not be available at the address. The petitioner shown the said money order paid to the payee on the said date and charged this amount to Money Order Paid Account on the same day.

B2N

c/- That during preliminary enquiry, the payee denied the payment and they also denied their signature or thumb impression on the money order paid vouchers. The identifier and scriber of thumb

impression also denied to have identified ~~is~~ or
scribed the money order and their signature on the
money order paid voucher.

d/- That in view of aforesaid lapse and misappropriation of value of money orders, a charge sheet under Rule 8 of the Extra Departmental Agents (Conduct & Service) Rules, 1964, hereinafter referred to as Rules, 1964, was submitted to the petitioner on 11th November, 1987 and after following the relevant procedure of the Rules as well as principle of Natural Justice, the Enquiry Officer completed the enquiry and submitted its report. It is pertinent to mention here that all relevant documents were examined by the petitioner and full opportunity for cross-examination of witnesses was also availed. In the said report, the charges which were levelled against the petitioner were found proved.


e/- That on the basis of enquiry report as well as other connected records, the Disciplinary Authority scrutinised the matter in detail, and an order of penalty of dismissal of service was passed on 28th August 1988.

5.

f/- That the petitioner filed an appeal to the Director Postal Services, Allahabad against the order of dismissal and the appeal was examined by the Director Postal Services, Allahabad and it was held that there is no infirmity in the dismissal order, and the appeal was rejected, vide an order dated 22nd July 1989.

4/- That the contents of paragraphs 1, and 2 of the petition need no comment.

5- That in reply to the contents of paragraph 3 of the petition, it is submitted that for proper answer, the reply given against paragraph 6 may be referred.

6- That the contents of paragraphs 4 and 5 of the petition need no comments.

7- That the contents of paragraph 6(i) of the petition are not correct, as stated. A detailed reply has already been furnished in foregoing paragraphs hence need not be repeated here again.

8- That the contents of paragraph 6(ii) of

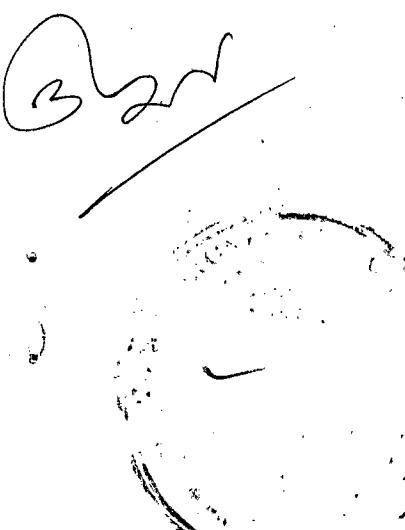
6.

the petition are not correct and as such are denied.

9- That the contents of paragraph 6(iii) of the petition are matter of record and as such need no comment.

10- That the contents of paragraph 6(iv) of the petition are not correct and as such are denied. It is absolutely wrong to allege that the disciplinary enquiry was carried out in most improper and illegal manner. Contrary to this it has been done by following all the procedure and enquiry was concluded.

11- That the contents of paragraph 6(v) of the petition are not correct and as such are denied. It is further submitted that the law which has been referred in paragraph under reply shall not be applicable in the present case. It is further submitted that the petitioner, under the statutory rules, moved the Enquiry Officer causing supply of certain additional documents other than those enumerated in the charge sheet. The Inquiry Officer within his power and jurisdiction might have considered some of the additional



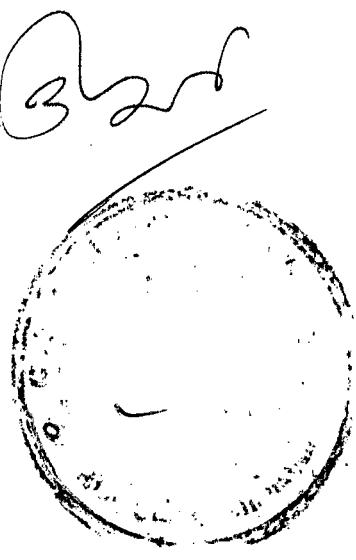
7.
~~documents~~

documents as irrelevant. The Disciplinary Authority, i.e the Superintendent of Post Offices, Sultanpur has not acted in any way in dis-allowing the additional documents considered to be irrelevant. All the witnesses and records examined during the course of preliminary enquiry and on which the definite articles of charges were based, were examined by the petitioner, cross-examination during the course of enquiry and there had been no any omission in extending any reasonable opportunity to him. Rest of the averments are denied.

12- That the contents of paragraph 6(vi) of the petition are not correct and as such are denied.

On 20th January 1988 and 31st March 1988, the petitioner has examined all those documents, which have been referred in para under reply and he has signed the proceeding sheet on the date.

13- That the contents of paragraph 6(vii) of the petition are not correct and as such are denied.


detailed reply has already been given in foregoing paras, hence need not be repeated here again. It is further submitted that all the actions were taken by the Inquiry Officer within his jurisdiction under

normal rules and powers vested to him. The contents of para under reply are not correct as stated. As regards def~~ense~~ nominee it was the petitioner's responsibility to have persuaded the defence nominee to attend the enquiry on all dates.

14- That the contents of paragraph 6(viii) of the petition raises a legal issue, hence are not replied through an affidavit. However, the deponent is advised to state that the law laid down in para under reply shall not be applicable in the present case.

15- That the contents of paragraph 6(ix) of the petition are not correct and as such are denied. contention
It is further submitted that the petitioner's ~~substitution~~ that pages of postman register were changed with malafide intention, is not correct as page 43 is attached with page 44, in the book and both have not been separated in the book from each other move over the petitioner has not challenged the substitution of page 43 during the period when he was on duty and initialed the page 44, 46, 47, 48 and 49 of the said register, and as such his contention is only lame excuse devoid of truth. The enquiry officer has not

(Signature)

9.

passed any order of dismissal, but he has submitted his report proving the charges levelled.

16-That the contents of paragraph 6(x) of the petition are not correct and as such are denied. It is wrong to say that the same witnesses were examined in petitioner's absence and were cross-examined by him/ defence nominee. The petitioner was present at the time of examination, but denied to sign the proceeding sheets dated 25th April 1988 and 16th May 1988. Therefore, when his next defence assistant attended the enquiry from 23rd May 1988, full opportunity was given to him for cross examination of the witnesses. Rest of the contents are not correct.

17- That the contents of paragraph 6(xi) of the petition are not correct and as such are denied. The Disciplinary Authority has applied its mind while reaching the conclusion. ~~was not~~

18- That the contents of paragraphs 6(xii) of the petition are not correct and as such are denied. The petitioner was present on 11th April 1988 and 25th April 1988, during the course of enquiry and

he refused to sign on the proceeding sheets on 14th May 1988. Moreover, full opportunity was given to him for cross examination of witnesses, when his next defence assistant attended the enquiry.

19- That the contents of paragraph 6(xiii) of the petition relates to the defence and the answering respondents have nothing to do, on behalf of defence. ~~This~~

20- That the contents of paragraphs 6(xiv) and 6(xv) of the petition are not correct and as such are denied. The Enquiry Officer has acted acted judiciously within the frame work of normal ways. He has not passed any dismissal order by crediting the frauded amount lapses are not ~~to be~~ to be pardoned.

21- That the contents of paragraph 6(xvi) of the petition are not in the knowledge of answering respondent. The present case fully relates to the petitioner's grave misconduct.

22- That in reply to the contents of paragraph

11.

6(xvii) of the petition are not correct and as such are denied. While deciding the appeal, the appellate authority has summoned all records, enquiry proceedings file, enquiry report and the decision was taken by him only after examination of these records and documents.

23- That the contents of paragraph 6(xviii) of the petition are not correct and as such are denied. The appellate order is ~~itself~~ itself in speaking order.

24- That ~~the~~ in reply to the contents of paragraph 7 of the petition, it is submitted that in view of facts stated above, the petitioner is not entitled to any relief, as prayed in paragraph under reply. Moreover, the petition is devoid of merit and is liable to be dismissed.

25- That the contents of paragraphs 8, 9, 10, 11, 12 and 13 of the petition need no comment.

That the contents of paragraphs 1 and 2 of this affidavit are true to my personal knowledge; those of paras 3 to 22 and 25 are based on records;

12.

those of paras 23, and 24 are based on legal advice, which all I believe to be true. No part of it is false and nothing material has been concealed in it. So help me GOD.

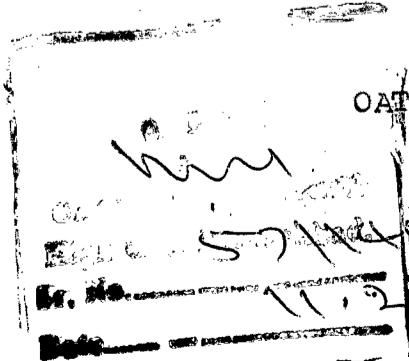

Deponent.

I, D.S. Chaubey, clerk to Shri KC Sinha, Advocate declare that the person making this affidavit and alleging himself to be the deponent is known to me personally.


Identifier.

Solemnly affirmed before me on this ~~11~~¹⁵ day of February 1990 at ~~5.40~~^{5.45} am by the deponent, who is identified by aforesaid.

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


OATH COMMISSIONER.

11.2.90

A42

In the Central Administrative Tribunal Allahabad.

of 274
No. of 1989.

..... Swamy Daral Mehta Petitioners
Appellant
Applicant
VERSUS
..... Union of India Respondent
Opposit Party

I, Om. Gupta in the above matter hereby appoint and retain SHRI KRISHNA CHANDRA SINHA, 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 order passed therein, appeals and or other proceedings there from and also in proceedings for review of judgment 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 authorised 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, add 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 instruction at all stages he / they is are at liberty to retire from the case and recover all amount due to him / them and retain all my/our monies till such 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 all intents and purposee.

Executed by me/ us this day of 19 at

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

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

(where the executant/s is / are illiterate blind or unacquainted with the language 228001
vakalat) Subd. of Post Offices,
Sikanyangal

Certified that the content 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

K. C. SINHA

Advocate

Additional Standing Counsel
Central Government
High Court, Allahabad
Counsel for Applicant/Respondents
No.

ACB

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH, LUCKNOW

Civil Misc. Application No. 196 /1990 (L)

On behalf of Union of India

...Applicants/
Respondents

In

C.A. No. 274 of 1989 (L)

Fixed on 28-3-90 for F.H

Swami Dayal Misra

... Applicant

Versus

Union of India & Others

... Respondents

To

The Hon'ble Vice Chairman and his
Companion Members of the Tribunal.

The applicant most respectfully states :-

1. That in view of the facts and circumstances stated in the accompanying R.A., it is, in the interest of justice, that the submissions made in the C.A. by the Respondents be ignored.

P R A Y E R

Wherefore, this Hon'ble Tribunal may kindly be pleased to ignore the statements made in the C.A. by the Respondents as incorrect and ~~excess~~ false. Any other relief which the Hon'ble Tribunal consider proper be also most graciously awarded to the applicant.

Dated :

March 26, 1990


(S.B. Mishra)
Advocate
Counsel for the Applicant

Filed today
27/3/90

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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW

O.A. No. 274 of 1989 (L)
Fixed on 28-3-90 for F.H.

Swami Dayal Misra ... Applicant

Versus

Union of India and Others ... Respondents

Rejoinder Affidavit of Swami Dayal Misra,
aged 55 years son of late Gur Sharan Misra, R/o Vaidaha,
Post Waidaha, District, Sultanpur.

... Deponent.

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

1. That the deponent is the applicant in the above noted case and he is fully acquainted with its facts and circumstances. He has read the contents of the O.A. and the same have been explained to him and he is now in a position to controvert the facts narrated therein.
2. That the contents of paras 1 and 2 of the Counter Affidavit need no comment.
3. That the contents of para 3 of the Counter Affidavit are accepted only to the extent that the applicant Deponent was Branch Postmaster of Waidaha, Distt. Sultanpur and the rest as stated are denied. In reply it is submitted that no complaint in original regarding non payment of the two

Kamleshwar Singh

contd ... 2

A/C

disputed Money Orders was ever brought on enquiry records on behalf of the Disciplinary authority. Instead some reminder was obtained and produced. It is further submitted that one Sri Ram Shabd Misra, a Pattidar of the applicants was interested to get his real brother Sri Misra appointed in place of the applicant. This Ram Shabda Misra was a clerk in Sultanpur Division and qualified for promotion to the cadre of the Inspector of Post Offices and was officiating in the same District and attached to the office of the Supdt. of Post Offices of Sultanpur Respondent No. 2. It is also submitted that the ~~payees~~ of the two Money Orders were own men of the said Sri R.S. Misra who persuaded them to give a false statement against the applicant. It is further stated that the Money orders were paid to the respective payees by the E.D.M.P. of the office whose duty was to exchange Mails from the account office and carry out delivery work of the office. The E.D.M.P. (Extra Departmental Mail Peon) had paid the Money orders and properly taken them into account on the date of payments shown thereon. It is further submitted that alterations, removal of pages from the Postman's Register and corrections by way of overwritings in figures etc. were made after these records were taken possession of by the Inspector of Post Offices concerned when the applicant was put off duty through the mischief of the said Inspector of Post Offices Sri R.S. Misra, a Pattidar of the petitioner on economical terms with the applicant. It is also submitted that the M.O. No. 679 dated 19.5.86 for Rs. 500/- was paid to the real payee on 27.5.86 by the E.D.M.P. concerned.

3.b. That the contents of para 3.b of the Counter Affidavit as written are not admitted. In reply it is stated

that the M.O. No. 1543 dated 16.4.86 for Rs. 500/- was received on 21.4.86 and given out in delivery to Sri Ram Sunder Singh, E.D.M.P. of the office who paid it to the payee Sri Ganga Ram Prajapati on the same day and returned the said voucher to the ~~xxxxxx~~ applicant who took the same into account. The remark that the payee was not available in the Register of the said E.D.M.P. is fake and has been forged after the office records were taken possession of and this action was simply to entrap the applicant as submitted above.

3.c. That the contents of para 3.c of the Counter Affidavit are not admitted. In reply it is submitted that it was the said Inspector of Post Offices of Sultanpur who persuaded the concerned persons to disown their T.I. or signatures on the relative paid vouchers otherwise the payment has been correctly made to the respective payees.

3.d. That the contents of para 3.d of Counter Affidavit as written are not admitted. In reply it is submitted that in the oral enquiry the material documents viz. original complaints and other documents desired for inspection were not made available for inspection for preparation of his defence, a valuable legal right of the applicant stands denied and the enquiry stood vitiated on which there was no just

3.i. That in reply to contents of para 3.i of the Counter Affidavit it is submitted that the appeal of the applicant was rejected by the appellate authority respondent no. 3 in whose office the said Sri Ram Shabda, Inspector of Post offices of Sultanpur was transferred and posted as

Investigation Inspector. It is further submitted that he purposely sought for his transfer to Allahabad to canvass rejection of the appeal which was a malefide action.

4. That contents of para 4 of the Counter Affidavit are obviously admitted by the respondents.

5. That in reply to contents of para 5 of the Counter Affidavit it is stated that the facts have not been made clear in the C.A. as such the contents of para 3 of the application are reiterated.

6. That the contents of paras 4 and 5 of the application apparently stand admitted.

7. That the contents of para 7 of the Counter Affidavit as written are not admitted. The reply to all foregoing paras of the Counter Affidavit have been fully replied.

8. That contents of para 8 of the Counter Affidavit are not accepted. In reply the contents of para 6(iii) of the application are reiterated.

9. That contents of para 9 of the Counter Affidavit denotes that contents of para 6.(iii) of the application stand admitted by respondents.

10. That contents of para 10 of the Counter Affidavit are denied as incorrect. In reply it is submitted that the oral enquiry was not carried out in a proper manner in as much the supply of material documents for inspection was refused to the applicant thereby his legal right was denied

Kamaljeet Singh

violative of Article 311 (2) of the Constitution. 1988
ALR 39 D.B. Summary cases of Supreme Court Chandra Tiwari
Vs. Union of India. It is submitted that the action of
Supdt. of Post Offices was irregular and illegal when
he made interference in the fair conduct of the enquiry
proceedings hence there out right denial of opportunity
to the Govt. servant as provided in the Constitution.

12. That the contents of para 12 of the Counter
Affidavit are not admitted.

In reply it is submitted that the applicant was
not given ample time to search for a defence Assistant.
The contents of para 6(vi) are reiterated.

13. That the contents of para 13 of the Counter
Affidavit are denied as not correct. The contents of para
6(vii) of the application are reiterated. It is also
submitted that most of the statements of S.Ws.
were recorded by the E.O. in absence of his Defence Asstt.
against protest and he was made to sign. The enquiry badly
suffers from procedural defects as such bad in law.

14. That the contents of para 14 of the Counter
Affidavit are denied as not correct. In reply the contents
of para 6.(viii) of the application are repeated. The
authority referred is perfectly applicable in this case.

15. That the contents of para 15 of the Counter
Affidavit are not accepted. The substitution of pages were
got made after the records were taken possession of
the dismissal order has been passed by the D.A. respondent
no. 2 but the same is based on a vitiated enquiry report

as submitted in foregoing paras.

16. That the contents of para 16 of the counter affidavit are not accepted. State witnesses have been examined in absence of Defence Nominee ~~through~~ though proper application was moved to the Inquiry Officer for adjournment of the enquiry in absence of the Defence nominee.

17. That the contents of para 17 of the Counter Affidavit are denied. In reply contents of para 6(xi) of the application are referred again.

18. That the contents of para 18 of the Counter Affidavit are not correct hence denied. In reply it is stated the statements were recorded in absence of the applicant. Recording of Statement of witnesses in absence of the applicant was itself an illegal action which cannot be covered by giving subsequent time for cross examination. There is apprehension of bias whether the statement was dictated by the Presenting Officer or by the Enquiry Officer as they very often do. It would have been fair if the witnesses were not examined in absence of the D.O. or his nominee or they should have been examined in-chief a fresh which was not done.

19. That in reply to para 19 of the Counter Affidavit it is stated that it was not for the S.P.S. to prove his innocence but it was a duty cast upon the prosecution to prove the guilt of the S.P.S. concerned.

20. That the contents of para 20 of the Counter Affidavit are not admitted. The Inquiry Officer has deviated

from the principles laid down for making an inquiry. The I.O. started from favour to state from the very beginning which was not a judicious action of the Inquiry Officer.

21. That the contents of para 21 of the Counter Affidavit are not accepted and those of para 6.(xiv) of the application are referred to.

22. That contents of para 22 of the Counter Affidavit are not admitted. In reply it is submitted that if the learned appellate authority had examined the documents, Inquiry Report and the final order, it must have noticed the illegality crept in the enquiry and thereby in the final order based on it. The appellate order has been influence by R.S. Misra, I.I. of the office.

23. That the contents of para 23 of the Counter Affidavit are denied as not correct. Under principles of natural justice each of the points raised in the grounds ought to have been well discussed. The appeal has been decided as if a Summary trial hence unjudicious and bad in law.

24. That the contents of para 24 of the Counter Affidavit are not admitted. It is respectfully submitted that the respondents have not made any effective submission which would assist this Hon'ble Tribunal in arriving at a judicious and equitable conclusion.

25. That the contents of para 25 of the Counter Affidavit



contd .. 9.

shows that contents of paras 8 to 13 have been admitted by the respondents.

Kamleshji

Lucknow;

(Swami Dayal Mishra)
DEPONENT

dated the 26th March 1990

VERIFICATION

I, the deponent, above named, do hereby verify that the contents of paras 1 to 25 of this Rejoinder Affidavit are true to my own knowledge and those of paras — to — are believed to be true by me on the basis of the legal advice received.

Signed and verified this the 26th day of March 1990 at Lucknow.

Kamleshji

I certify that Swami Dayal Mishra who has signed this R.A before me

(Swami Dayal Mishra)
DEPONENT

*Swami Dayal
Mishra
26/3/90*

ASV