

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE O.A. 311 OF 1989

NAME OF THE PARTIES Bishwas Kumar Applicant

Versus

Superintendent post officer Respondent

Part A.

Sl.No.	Description of documents	Page
1	Check list	A 1 to 2
2	Order sheet	A 3 to 7
3	Judgement Date 21/10/92	A 8 to 11
4	Petition copy.	A 12 to 21
5	Power	A 22
6	Annexure	A 23 to 28
7	Misc Appl- No. 368/90	A 29 to 36
8	Superintendent Affidavit	A 37 to 43
9	Respondent Affidavit	A 44 to 49
10	Power	A 50
11		
12		
13		
14		
15		
16		
17		
18		


CERTIFICATE

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

Dated 15/6/2011

Counter Signed.....


Section Officer/In charge


Signature of the
Dealing Assistant

A1

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 311 of 1989 (L.)

APPLICANT(S) Bighnas Kumar

RESPONDENT(S) Supdt. Post Offices & nr

Particulars to be examined

Endorsement as to result of examination

- | | | |
|-----|--|-----------------|
| 1. | Is the appeal competent ? | Yes |
| 2. | a) Is the application in the prescribed form ? | Yes |
| | b) Is the application in paper book form ? | Yes |
| | c) Have six complete sets of the application been filed ? | Four sets filed |
| 3. | a) Is the appeal in time ? | Yes |
| | b) If not, by how many days it is beyond time? | — |
| | c) Has sufficient case for not making the application in time, been filed? | — |
| 4. | Has the document of authorisation/ 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 ? | Yes |
| | c) Are the documents referred to in (a) above neatly typed in double sapce ? | Yes |
| 8. | Has the index of documents been filed and paging done properly ? | Yes |
| 9. | Have the chronological details of representation made and the out come 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? | No |

A2

Particulars to be Examined

Endorsement as to result of examination

- | | |
|--|-----|
| Are the application/duplicate copy/spare copies signed ? | Yes |
| 2. Are extra copies of the application with Annexures filed ? | Yes |
| a) Identical with the Original ? | — |
| b) Defective ? | — |
| c) Wanting in Annexures | — |
| Nos. _____ pages Nos _____ ? | — |
| 3. Have the file size envelopes bearing full addresses of the respondents been filed ? | No |
| 4. Are the given address the registered address ? | Yes |
| 5. Do the names of the parties stated in the copies tally with indicated in the application ? | Yes |
| 6. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? | NA |
| 7. 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 |
| Have the particulars for interim order prayed for indicated with reasons ? | Yes |
| Whether all the remedies have been exhausted. | Yes |

R
6/4/83

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
---------------------------------	--	--

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

7-11-89

Shri J. Prasad Counsel for the applicant is present and heard.

This case has come up before us on the request of the Counsel. Now he wants time. Let this case be listed on 16-11-89 for hearing on

admissions fixed

J.M.
J.M.

J.M.
J.M.

(SWS)

16-11-89

No sitting Adj. to 27-11-89
Counsel for applicant is present

16-11-89

27-11-9

No sitting Adj. to 2-1-90
Applicant is present

27-11-90

OR
Swim
for admn
h
11/1

A4

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
---------------------------------	--	--

Hon' Mr Justice Kamleshwar Nath, V.C.

Hon' Mr K. Obayya, A.M.

2/1/90

Shri Janardan Prasad counsel for the applicant is present. Dr. Dinesh Chandra takes notice on behalf of Opposite Parties. Notices meant for respondents be delivered to him.

Respondents are directed to file counter reply within three weeks to which the applicant may file rejoinder within one weeks thereafter. The case be listed for admission on 6-2-90, when the case is likely to be disposed of finally.

In the matter of interim relief, the Opp.Ps. may file a reply; but, in case any selection is made on the post, it will be subject to the order of this Tribunal.

A.M.

V.C.

(sns)

6/L

No sitting Adj to 27.3.90
Both the counsel are present

27/3/90

no sitting Adj to 2/5/90

R
27/3/90

OR
Dr D. Chandra
takes notices on
behalf of Opp. Pts. & also
Power filed Affidavit
No CA filed.
S P A
L
1/5

Dinesh/

31/89 (C)

AS

30.5.90

Hon. Mr. P.C. Jain - A.M.
Hon. Mr. J.P. Sharma - J.M.

Shri Janardan Prasad Counsel
for the applicant. Shri Dinesh Chandra
Counsel present for all the respondents.

The respondent filed the reply on
25/5/90 and have prayed through M.P. No. 368/90.
for condonation of delay in filing the
same. The applicant's counsel has no
objection. Counter reply may be taken on
records counsel for respondent has agreed
to give another copy of the reply to the counsel
of the applicant within 2 days. M.P. No. 368/90.
is disposed of according to rules.

The applicant ^{may file} ~~may~~ reply, if any,
within 2 weeks. List of admission/
direction for final hearing on 28/7/90.

le
J.M.

(See)
A.M.

23.7.90

Hon Justice K. Nall, v.c
Hon Mr K. Oday AM

OR

No RA filed
S.F.A.

18/7/90

Admit

list before D.R on 24.9.90

AM

v.c

See original
order on
main petition

24/9

See original order
on main petition

D.R

The case is listed before
Hon. Court on 12-11-90 P.O.

DR

No RA filed
S.F.O

11/4

3.12.90

D. R.

Applicant's side
is not present.
Dr. D. Chandra
is present for
the respondents.

Applicant ~~did not~~
~~file~~ ^{regainder}
~~in this case.~~

This case is listed
before me on

21/12 for filing
~~regainder~~
~~in this case.~~

21.12.90

D. R.

Applicant's
side is not present
today. Applicant
to file regainder
by 21.1.91. Dr. D.
Chandra appears
for the respondents.
This case is listed
before me on
21.1.91 for filing
regainder.

21.1.91

Applicant's side
desires time for
file Regainder.
Fix 13.3.91 for filing
Regainder. R

Am 3m

(A)

C.R.

3.9.92

No signing of D.B. adj to
20.10.92

k

No Suppl.

R.A. has been

20.10.92

filed.

S.F.O.

8
19/10/92

Atkhl. M. K. Obayya Am
Atkhl. M. S.N. Prasad Jm

Dr. D. Chandrasekhar
respondent in protest.

Argument heard. Judgment.

reserved.

Jm

Am

21.10.92

Atkhl. M. K. Obayya Am
Atkhl. M. S.N. Prasad Jm

Judgment. pronounced

Today

Jm

Am

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
(LUCKNOW BENCH)
LUCKNOW.

D.A. NO

199 (L)

T.A. NO

Date of Decision

Petitioner.

Advocate for the
Petitioner(s)

V E R S U S

Respondent.

Advocate for the
Respondents

C O R A M

The Hon'ble Mr.

The Hon'ble Mr.

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

VICE-CHAIRMAN/MEMBER

21

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW

Original Application No. 311 of 1989(I)

Vishwas Kumar Applicant

Versus

Superintendent of Post Offices Hardoi
and others Respondents

Hon'ble Mr. K. Obayya, Member (A)

Hon'ble Mr. S.N. Prasad, Member (J)

(By Hon'ble Mr. S.N. Prasad, J.M.)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for quashing the order passed by the respondent no. 2 dated 4.10.89 whereby the applicant has been removed from service (Annexure-4) and for directing the respondents not to implement the removal order dated 4.10.1989 and to pay the salary and other consequential benefits to the applicant.

2. Briefly, stated the facts of this case, inter-alia, are that the applicant was appointed as S.D.O.A. (Extra Departmental Agent), Majhila, Hardoi on 15.2.79 and while he was serving, he was involved in a criminal case and was convicted and as a result of his conviction and sentence in a criminal case, the impugned order dated 4.10.89 was passed. The main grievance of the applicant appears to be that since he has been bailed out during the pendency of the appeal filed by him against the conviction and sentence, ~~he was granted bail~~ and since he has been granted bail and since the sentence passed by the criminal court has been suspended ~~the applicant~~ there is no conviction and sentence and as such the applicant be re-instated with all t

Contd...

:: 2 ::

consequential benefits. It has further been stated that since the above removal order dated 4.10.1989 was passed without giving any opportunity to defend him^{~ self ~} and as such the above impugned order is illegal and invalid on this ground also.

3. In the counter reply filed on behalf of the respondents, it has been contended, inter alia that the applicant was involved in a Criminal Case u/s 147/148/149/307 I.P.C., and was convicted and sentenced to undergo three years rigorous imprisonment for the offence punishable u/s. 148 I.P.C., and he was further convicted and sentenced to undergo 7 years rigorous imprisonment for the offence punishable u/s 307 read with Section 149 I.P.C., and the applicant was removed from service as a result of penalty imposed on the ground of misconduct which led to his conviction on a criminal charge (vide sub-Divisional Inspector (North) Haridwar's Memo. dated 4.10.89). The applicant appealed against the Court's order and is on bail. It has further been contended that the applicant is entitled to be taken back in service on his post, if he is exonerated from criminal charges as a result of Judicial appeal and the services of the incumbent if appointed^{~ in place of the applicant ~} will be liable to be terminated according to the condition of provisional appointment. It has further been contended that the applicant was working on the post through which the public of 13 villages was served daily and in case no arrangement is made vice Bishwas Kumar the delivery of postal articles will be held up, and as such the application of the applicant is not tenable, ^{It} lacks merit and is liable to be dismissed with costs.

4. Rejoinder-affidavit has been filed by the applicant wherein he has re-iterated almost all those points which have already been mentioned in the main application.

5. We have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

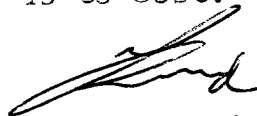
6. This is noteworthy that from the perusal of the pleadings of the parties, it is apparent that a criminal appeal which has been filed by the applicant in the Lucknow Bench of the High Court of Judicature at Allahabad is still pending and has not been decided so far. It is well settled that granting bail to accused/convicted person does not connote the exoneration of the accused from the charges by the court~~er~~ concerned granting bail, but only conviction and sentence is temporarily stayed till the disposal of the appeal. It is important to point out that from the scrutiny of the entire material and evidence on record, it is apparent that the above criminal appeal which has been filed by the applicant in Lucknow-Bench of the High Court of Judicature at Allahabad, is still pending and has not been decided so far and as such unless the applicant is acquitted of the charges levelled against him by the court in the above appeal, the applicant is not entitled to relief sought for; Keeping in view the provisions contained under Rule 8-A of the S.O.A. (Conduct & Service) Rules, 1964.

7. In the result, the application of the applicant is devoid of merit and is liable to be

A11

:: 4 ::

Dismissed and the same is accordingly dismissed without
any order as to cost.


Member (J) 21.10.92


Member (N)

Lucknow Dated 21.10.1992.

(RKA)

A12
J. Sep., Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW,
BENCH LUCKNOW.

Claim Petition no. 311 of 1989. (L)

Bishwas Kumar Petitioner/Applicant.

Versus

Superintendent Post
Offices & another Respondents.

I N D E X

Sl.no.	P a r t i c u l a r s	Page nos.
1.	Claim Petition	1 to 9
2.	Annexure No. 1	10
3.	Annexure No. 2	11
4.	Annexure No. 3	12
5.	Annexure No. 4	13
6.	Annexure No. 5	14
7.	Power	15
8.		

Recd

D. V. S.
for 21.11.89

Filed today
6/11/89

Noted for 7.11.89
(as mentioned in
the court)

Lucknow : dated
6-11- ,1989.

Tamrinder Singh
Advocate
Counsel for Petitioner/Applicant.

A13

In the Central Administrative Tribunal at Lucknow
Bench Lucknow.

Claim Petition No. 311 /1989 (L)

Application Under Section 19 of the Administrative
Tribunals Act 1985

Vishwas Kumar, aged about 29 years;
S/o Ram Krishna Pandey, R/o Village and Post-Majhila,
Pergana-Alamnagar, Tehsil, Shahabad, District-Hardoi.

....Applicant

Vs.

1. Superintendent of Post Offices, Hardoi.
2. Inspector of Post Offices, Hardoi (North), Sub-Division,
Hardoi.

.... Respondants.

Details of Application

1. Particulars of the applicant :

- (i) Name of the Applicant - Vishwas Kumar
- (ii) Name of father - Shri Ram Krishna Pandey
- (iii) Age of the applicant- 29 years
- (iv) Designation and particulars of office-
(name and station) in which employed or was
last employed before ceasing to be in service.

E.D.D.A. , Majhila, Hardoi.

- (v) Office Address- Branch Post Office, Majhila,
Hardoi.

- (vi) Address for service of notices: Village and
post office-Majhila, Pergana-Alamnagar,
Tehsil-Shahabad, District-Hardoi.

2. Particulars of the Respondants :

- (i) Name of the Respondant : Superintendent of
Post Office, Hardoi.

Parent Benches

(ii) Inspector of Post Offices
Hardoi (North), Sub-Division,
Hardoi.

(ii) Name of Father- Not applicable

(iii) Age of the Respondant: Not applicable

(iv) Designation and particulars of the office
(name and station) in which employed.

(a) Superintendent of Post Offices, Hardoi.

(b) Inspector of Post Offices, Hardoi (North)
sub-division, Hardoi.

(v) Office Address : As above.

(vi) Address for service of notice : As above.

3. Particulars of the orders against which
application is made:

The application is against the following order :-

(i) Order No. A/Majhila Annexure no.4

(ii) Date 4.10.1989

(iii) Passed by - Inspector of Post Offices
Hardoi (North) sub division
Hardoi.

(iv) Subject in brief :

The applicant was appointed as E.D.D.A. (Extra
Departmental Agent) Majhila, Hardoi on 15.2.79
and he joined on the said post on same day since
then he is in service. The applicant was falsely
implicated in a criminal case on 5/3/88 and
in the said case he was bailed out and before
and after release on bail the applicant was in
service and he was suspended by order no. A/
Majhila dated 8.10.88. The applicant was
reinstated by memo No. A/Majhila dated 28.2.89
but the Branch Postmaster Majhila Hardoi namely
Shri Vinod Kumar Tripathi did not allow the

)

[illegible][illegible]

A16

(4)

wanted to get the appointment of his relative on the post of applicant. In the said criminal case the applicant was bailed out and resumed his duty. Due to manipulation of Shri Vinod Kumar Tripathi Branch Postmaster, Majhila, the applicant was suspended by memo No. A/Majhila dated 8.10.1988 and the applicant was reinstated by order dated 28.2.1989 and the applicant was removed from his services by memo No. A/Majhila dated 4.10.1989.

(b) That the applicant was convicted in the criminal case and against the order of conviction the applicant filed criminal appeal in the Hon'ble High Court, Bench Lucknow and the criminal appeal was admitted and bail was granted and the sentence was suspended by Hon'ble High Court during the pendency of the appeal. In these circumstances the removal order dated 4.10.89 is illegal and against the provisions of law.

(c) That before removing the applicant from the services no opportunity was given to the applicant for hearing which is mandatory and without given opportunity of being heard the respondents have no jurisdiction to remove the applicant from his services. The removal order was passed in violation of the Article 14, 16 and 311 of the Constitution of India and Natural justice. In many cases Hon'ble High Court and Hon'ble Supreme Court have observed that the government employee can not be removed from his services on the basis of conviction without given opportunity of being heard.

(d) That the removal order dated 4.10.1989 was passed in arbitrary manner with malafide intention.

S. S. S. S. S.

The brother of Shri Vinod Kumar Tripathi Branch Post-master Majhila was lodged the F.I.R. against the applicant on the insistence of Vinod Kumar Tripathi because Shri Vinod Kumar Tripathi wanted to get the appointment of his relative on the place of the applicant and applicant was also suspended on the manipulation of Shri Vinod Kumar Tripathi and the correct facts were brought in the knowledge of the respondents the suspension order of the applicant was revoked and the applicant was put back in the service. But Shri Vinod Kumar Tripathi again approached to the respondents and narrated incorrect facts before the respondents and he got the applicant removed from services but the correct fact is that after the conviction, the criminal appeal was filed in Hon'ble High Court and applicant was bailed out and sentence awarded by the Trial Court of the criminal case was suspended by the Hon'ble High Court and the said information was given by the applicant to the respondents and the applicant was not removed from the services on the basis that sentence was suspended but Vinod Kumar Tripathi with collusion of respondents got the removal order of the applicant from the services which is against the provisions of law.

(e) That the applicant was convicted on 5/3/88 but there is no explanation on behalf of the respondents why the applicant was not removed from the services just after the conviction. These facts indicate that the sentence was suspended by the Hon'ble High court hence the applicant was not removed from the services by the respondents.

(f) That the respondent no.2 acted jurisdiction

not vested in him and failed to exercise jurisdiction vested in him. He has passed his order on his own surmises and conducture and the said removal order is no order in the eye of law and the removal order was passed by the respondent no.2 without applying his mind and respondent no.2 was influenced by Shri Vinod Kumar Tripathi, Branch Postmaster, Majhila (Hardoi). The respondent no.2 has not considered that ~~the~~ against the conviction order appeal is pending in the Hon'ble High Court and the sentence was suspended. The respondents can not ^{remove} ~~remove~~ the applicant from his services without given opportunity to him. No explanation was called out from the applicant before passing the order dated 4.10.1989 and no show cause notice was also given to the applicant before removing him from his services.

(g) That salary and other emoluments were not given to the applicant w.e.f. 1.3.1988 and during the suspension period no suspension allowance was given to the applicant. The applicant is entitled to get the salary w.e.f. 1.3.88 and suspension allowance but the same were not paid by the respondents which are also against the provisions of law.

(h) That the removal order is not ~~not~~ implemented so far and the applicant is still holding the charge of E.D.D.A.

7. Details of the remedies exhausted :

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc.

The applicant gave application to respondent no.1 and personally contacted him but the respondent no.1 told the applicant that the applicant was removed from

For 22/11/89 M. K. Singh

the services on the basis of conviction hence there is no provision to give application or any other petition to him and applicant insisted him to take the same but the respondent no.1 told that the same would not be accepted.

8. Matters not previously filed or pending with any other court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court of law or any other authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them.

9. Relief(s) sought

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

- a) That an order or direction may be issued for quashing the order passed by respondent no.2 dated 4.10.89 contained in Annexure No.4.
- b) That an order or direction may be issued thereby directing the respondents not to implement the removal order dated 4.10.1989 and to pay the salary and other emoluments w.e.f. 1.3.88 and pending salaries and other emoluments.
- c) That an order or direction may be issued in favour of the applicant which this hon'ble Tribunal deems just and proper in the circumstances of the case.
- d) That the cost of the petition may be allowed in favour of the applicant and against the respondents.

For and on behalf of the applicant

10. Interim Order, if any prayed for :

Pending final decision on the application, the applicant seeks issue of the following interim order :-

For the facts and reasons stated in para no.6 above it is prayed that the implementation of the order dated 4.10.1989 may be stayed and respondents may be directed not to implement the order dated 4.10.89 and to pay salary and other amoluments which is due w.e.f. 1.3.1988.

11. On the event of application being sent by registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so he shall attach a self-addressed post card/Inland letter at which intimation regarding the date of hearing could be sent to him .

The application is being personally presented before this Tribunal.

12. Particulars of Bank Draft/Postal Order in respect of the Application Fee :

1. Name of the Bank on which drawn - NIL

2. Demand Draft No.

Or

1. Number of Indian Postal Order(s) $\frac{22}{6}$ 859256

2. Name of the issuing Post Office-High Court
Post Office, Lucknow

3. Date of issue of Postal Order(s)-6.11.1989

4. Post Office at which payable-G.P.O., Lucknow.

13. List of enclosures :

1. Suspension Order dated 8.10.1988.

2. Reinstatement Order dated 28.2.1989

3. Order for joining.

4. Order of removal dated 4.10.1989

5. Order of Hon'ble High Court Bench Lucknow passed in criminal appeal.

30/11/89

VERIFICATION

I, Vishwas Kumar , S/o Shri Ram Krishna Pandey
age about 29 years, working as E.D.D.A. in the office
of Majhila Branch Post Office, Hardei , R/o Village and
post- Majhila, Pergana-Alamnagar, Tehsil- Shahabad,
District, Hardei, do hereby verify that the contents of
paras 1 to 13 are true to my personal knowledge and
para 6 (a) & 6 (b) believed to be true on legal advice
and that I have not suppressed any material fact.

Vishwas Kumar
Applicant.

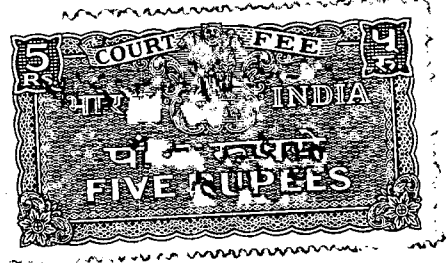
Date : 6.11.89

Place : Lucknow.

1992

ब अदालत श्रीमान In the Central Tribunal at Lucknow महोदय

वादी (मुद्दै) का वकालतनामा
प्रतिवादी (मुद्दालेह)



Nishwal Kumar

वादी (मुद्दै)

बनाम

Superintendent, Police Station at ... प्रतिवादी (मुद्दालेह)
नं० मुकद्दमा सन् १६ पेशी की ता० १६ ई०
ऊपर लिखे मुकद्दमा में अपनी ओर से

श्री जनार्दन प्रसाद

एडवोकेट महोदय
वकील

नाम अदालत	नाम मुकद्दमा	नाम फरीक
.....

हाई कोर्ट बेंच, लखनऊ

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करे - वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरी वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

साक्षी (गवाह) साक्षी (गवाह)

दिनांक महीना सन् १९८९

Accepted
Toward
5.11.89

A23

In the Central Administrative Tribunal Lucknow,
Bench Lucknow.

Claim Petition no. of 1989.

Bishwas Kumar Petitioner/Applicant

Versus

Superintendent Post
Offices and another Respondents.

LIST OF ENCLOSURES

Annexure No.1 The suspension order dated 8-10-1988.

Annexure No.2 The Revocation order dated 28-2-1989.

Annexure No.3 The order for joining duty dated-
15-6-1988.

Annexure No.4 Removal order dated 4-10-1989.

Annexure No.5 The order of High Court Dt. 9.5 1989.

Lucknow : dated

6-11-1989.

1920/515
Applicant.

2020.11.30

Department of Posts

Office of the

Memo no. A/Manghila

Dated at HDI the 8-10-88

WHERE AS A case against Shri Bishwas Kumar EDDA Manghila account with Behtagokul po, in respect of a criminal offence is pending.

AND WHERE AS the said Shri Bishwas Kumar was detained in custody. w.e.f. 17-3-88 to 12-4-88 for a period excluding forty eight hourse.

NOW THEREFORE, the said Shri Bishwas Kumar is deemed to habe been put off duty with effect from the date of detantion in terms of Rule 98 EDAS (conduct & Benifices) Rules 1964 and shall remain put off duty unfill further orders.

Shri Bishwas Kumar will not be entiled to any allowance for the period for which he is kept off duty under this rule.

sd/-Ellisible

Seal
उप मण्डलीय डाक निरीक्षक
उत्तरी प्रदेस
-24101

Copy to :-

1. Bishwas Kumar EDDA Manghila.
2. Post Master Hanoi
3. Mail overseer Pihani, He will arrange suitable temporary arrangmente till further order against Shri above Bishwas Kumar.
4. B.P.M., Manghila.
5. The spos Hardoi w.e.f. his letter no.A-375/E, dated 29-9-88.
6. O/c.

Attested
True copy
Jawan
6.11.89

A25

11

Department of Posts

Office of The Seal

उप निदेशक डाक विभाग
अग्रिम क्र. 2

Memo no. A/ Manghila

3 सरी उप निदेशक डाक विभाग
241001
dated at HDI The 28-2-89

Shri Bishwas Kumar EDDA Manghila B. account with Behtagokul PO who was put off duty vide this office memo of given no. dated 8-10-88 is here by ordered to put back in duty with immediate effect.

Charge report should be submitted.

sd/- Ellisible

Seal

Copy to :-

उप निदेशक डाक विभाग
अग्रिम क्र. 2

3 सरी उप निदेशक डाक विभाग
241001

1. Shri Bishwas Kumar EDDA Manghila. He should joine his duty immidiats.
2. PM Hardoi.
3. BDM Manghila, He should joine Shri Bishwas Kumar and charge report submitted.
4. Mail overseer, Rhani. for necessary action. He will arrange the joining of Shri Bishwas Kumar.
5. The SPOS Hardoi.

Attested
True copy
Jamarul Haq
6/11/89

19/2/89 (241001)

126 12

Annex 140.3

पत्र-व्योहार-22

भारतीय डाक-तार विभाग

उत्तर देते समय कृपया
निम्न संदर्भ दें

प्रेषक ^{sent} उपमण्डलीय डाक निरीक्षक
उत्तरी उपमण्डल
हरदोई-241001

सेवा में,

श्री विनोद कुमार त्रिपाठी
शाखा डाकपाल मँझिला,
हरदोई ।

क्रम संख्या ए/

दिनांक : हरदोई, 15-6-88

विषय

ई डी डी ए श्री विश्वास कुमार पांडे को ड्यूटी पर
वापस न लेना

-----x-----x-----x-----x-----

श्री विश्वास कुमार पांडे ई डी डी ए मँझिला ने अपने प्रा-
धान पत्र दिनांक 14-6-88 के सूचित किया है, कि वह ई डी डी ए,
मँझिला का चार्ज लेने गये, किन्तु आपने उनको ड्यूटी पर वापस नहीं
लिया। कृपया फौरन उनको ड्यूटी पर लेकर चार्ज रिपोर्ट इस कार्यालय
को प्रस्तुत करें।

EO/= ^{sent} *Mysh*
उप मण्डलीय डाक निरीक्षक
उत्तरी उप मण्डल,
हरदोई- 240101

प्रतिलिपि श्री विश्वास कुमार पाण्डेय ई डी डी ए,
मँझिला & हरदोई को, कृपया शाखा डाकपाल मँझिला को अपनी
ड्यूटी के लिए सूचित करेंगे।

^{sent} *sent* रिवकुमार
उप मण्डलीय डाक निरीक्षक,
उत्तरी उप मण्डल,
हरदोई-241001

विश्वनाथ झा, मँझिला

*Attended
Done copy
Tansu Singh
6.11.89*

A2) 13

Departments of Posts

Annexure No. 4

Office of the

Seal
उप नरसीप साह निरीक्षक

Memo no. A/Manghila

उप नरसीप साह निरीक्षक
दस्तावेज - 24/10/89
dated 4-10-89

Where As Shri Bishwas Kumar EDDA Manghila .
account with Behtagokul has been convicted on a
crimanal charge to wrf. under section 148, 149,
307 I.P.c.

And Where As it is considered that the conduct
of said Shri Bishwas Kumar EDDA, Manghila which has
led to his convictions is such as to render his
further retention in the public service undesirable.

Now, Therefore, the undersigned hereby removes,
The said Shri Bishwas Kumar EDDA Manghila from ser-
vice with immediate effect.

sd/- Illisible

Seal

उप नरसीप साह निरीक्षक

Copy to :-

1. Shri Bishwas Kumar EDDA Manghila (absent
from duty). R/o Village Apo Manghila.
2. Post Master Hardoi.
3. The SPOS Hardoi.
4. O/c.

Attended
Treasurer
Jewar
24/10/89

A28

14

Annexure No. 5

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

Criminal Appeal No. 377 of 1989.

1. Ram Chandra, aged about 65 years, son of Hari Bilas,
2. Banwari, aged about 55 years, son of Kedar Pandey,
3. Radha Krishna, aged about 50 years son of Ram Shanker,
4. Awadhesh Kumar, aged about 40 years son of Yadu Nath Prasad Pandey.

5. Biswas Kumar, aged about 20 years, son of ^{Ram} ~~Radha~~ Krishna,

All residents of village Manjhila, Police Station Manjhila,
Distt. Hardoi.

....Appellants.
(In Jail)

Versus

The State of U.P.

....Respondent.

Criminal Appeal against the judgment and order dated 5.5.89
passed by Sri Ratnakar Dixit, Vth. Additional Sessions Judge
Hardoi in Sessions Trial No. 259 of 1988 U/s 148, 307, 149
I.P.C.

Lucknow Dated:- 9.5.1989.

Hon'ble R. Singh, J.

Admit.

Summon the record.

Learned counsel for the appellants says that they were on
regular bail during trial, that they did not abuse it, and that
they have no previous criminal history.

The appellants shall be released on bail on their each
furnishing adequate security to the satisfaction of C.J.M.
concerned. The execution of the sentence shall also remain
suspended during the pendency of the appeal.

Sd/- R. Singh,

9.5.1989.



VKY

Ex by des

14/5/108

Attest

True copy J. Singh
6.11.89

RECEIVED

10/5/89

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

Misc. Application No. 368 of 1990, A29

By Respondents.

O.A. No. 311 of 1989.

Biswas Kumar

.....

Petitioner

VERSUS

Union of India and others

Respondents.

Application for condonation of delay
in filing counter affidavit by Respondents.

In the above case it is submitted as follows :-

1. That the counter affidavit of the opposite party in the above case could not be prepared due to subsisting illness of counsel of the Respondent.
- 2, That the counter affidavit of the opposite party is, however, now ready and is being filed after serving a duplicate on the petitioner's counsel.

WHEREFORE, it is humbly requested that the delay in filing the counter affidavit by the opposite party owing to above reason may kindly be condoned and the same may be permitted to be filed now.

Dated : 17.5.90

J. G. G. G.

ADVOCATE

COUNSEL FOR RESPONDENTS.

By
F.T.
Sub
25/5/90

A30

In the Central Administrative Tribunal at Allahabad;
Circuit Bench, Lucknow.

Written Statement of A. Behalf of Respondent, No. 1 & 2

In

J. A. No. 311 of 1989 (L)

Biswas Kumar Applicant.

Versus.

Union of India & Others Respondents.

I, B.S. Bhaskar, aged about 51 years, son of Shri Gokulpd
Singh, Supdt. of Post Offices, HarDOI, do hereby
solemnly affirm and state as under :-

1. That the deponent is competent ~~of xxxxx xxx~~ to file this written statement on behalf of all the Respondents.
2. That the deponent has read the petition filed by Shri Biswas Kumar and understands the contents thereof.
3. That the deponent is well conversant with the facts of the case deposed hereinafter.
4. That it will be worthwhile to give a brief history of the case as under :-

contd. 2....

A31

Brief History of the Case

The applicant, Shri Biswas Kumar, Extra Departmental Delivery Agent was involved in a Criminal Case U/S 147/148/149/307 I.P.C., and was convicted and sentenced to undergo ~~for~~ three years rigorous imprisonment for the offence punishable U/S 148 IPC. He was further convicted and sentenced ^{to} undergo 7 years rigorous imprisonment for the offence punishable U/S 307 read with Section 149 IPC. Shri Bishwas Kumar was removed from service as a result of penalty imposed on the ground of mis-conduct which led to his conviction on a criminal charge vide Sub Divisional Inspector (North) HarDOI Memo No. A/Manjhila dated 4.10.89. The applicant appealed against the Court's order and is on bail.

Matter of provisional appointment on the post of EDDA Manjhila vide Shri Bishwas Kumar is in process and has not been finalised.

Shri Bishwas Kumar is entitled to be taken back in services ~~at~~ his post, ~~if~~ he is exonerated from criminal charges as a result of judicial appeal. Services of ^{the} incumbent if appointed vice Shri Bishwas Kumar will be liable to be terminated according to the condition of provisional appointment.

In this connection it may be submitted that the applicant Shri Bishwas Kumar was working on the post through which the public of 13 (thirteen) villages was served daily and in case no arrangement is made vice Shri Bishwas Kumar the delivery of postal articles will be held up.

A32

-: 3 :-

It will be expedient in public interest if the deponent is allowed to make provisional appointment in place of Shri Bishwas Kumar.

Para - Wise Comments.

5. That the contents of para, 1, 2 and § (1) to 3 (iii) need no comments.
6. That in reply to the contents of para 3 (iv) it is stated that the applicant was put off duty by the Sub Divisional Inspector, (SDI) North, Hardoi, on 8.10.88 as he was under detention from 17.3.88 to 12.4.88 (Annexure - 1 of the application). Later on, on 28.2.89 he was ordered to be put back on duty (Annexure - 2 of the application) but the applicant expressed his inability vide his letter dated 8.3.89 to resume his duties. ~~Consequent to this~~.

On 5.5.89 the applicant was ~~convicted~~ convicted and sentenced by Vth Addl. Sessions Judge, Hardoi to undergo 3 years rigorous imprisonment for the offence punishable U/S 149 IPC. He was further convicted and sentenced to undergo 7 years rigorous imprisonment for offence punishment U/S 307 read with Section 149 IPC. On receipt of the said judgment of the Court, the services of the applicant were terminated vide order dated 4.10.89 (Annexure - 4 of the application) as it was not reasonably practicable to hold any enquiry into the criminal offence committed by him and the procedure laid down in Rule 4

A33

-: 4 :-

Rule 8 of the EDA (Conduct and Services) Rules, 1964 was not applicable in this case as laid down in Rule- 8A of the said Rules.

The applicant has filed an appeal against the Court's order dated 5.5.89. He was released on bail by the Hon'ble High Court, Lucknow Bench on 9.5.89.

7. That in reply to the contents of para 4 and 5 it is stated that the applicant has not availed of the departmental remedy available to him under Rule 10 of the P & T. Extra Departmental Agent (Conduct and Service) Rules, 1964 in as much as he has not filed any appeal to the departmental authorities against the removal order dated 4.10.87. The application is, therefore, not tenable and is liable to be dismissed.
8. That the contents of para 5 need no comments.
9. That in reply to para 6 (a) of the application, submissions made in para 6 above are re-iterated.
10. That the contents of para 6 (b) are admitted to the extent that the appeal of the petitioner against his conviction has been admitted by the Hon'ble High Court and that he has been released on bail. The Hon'ble High Court has also ordered that the execution of the sentence shall also remain suspended during the pendency of the appeal.

A34

-: 5 :-

11. That in reply to para 6 (c) it is stated that the applicant was removed from the services as he was convicted in a Criminal offence and was sentenced to rigorous imprisonment. Provision of Rule 8 of the P & T., Extra Departmental Conduct & Service) Rules 1964 (EDA Rules), wherein procedure for imposing a penalty has been spelled out, are not applicable to the present case in terms of Rule 8-A of the EDA (Conduct & Service) Rules 1964.

The applicant has failed to make any representation or appeal against the impugned order to higher authorities of the department.

12. That the contents of para 6 (d) are denied. Submissions made in para 6 are re-iterated.

13. That in reply to Para 6 (e) it is submitted that the applicant was removed from service vide order dated 4.10.89 on his conviction on criminal offence on 5.3.1988.

14. That in reply to para 6 (f) it is submitted that Respondent No. 2 is the competent authority to pass an order of removal from service in respect of the applicant. The applicant was ~~removed~~ convicted in ~~the~~ criminal offence & was sentenced to imprisonment. The execution of the sentence was suspended by the Hon'ble High Court. But the sentence was not set aside.

It remained at its own place, only its execution was suspended and the applicant was released on bail. Therefore, the order

A35

-: 6 :-

of removal was fairly & correctly passed.

15. That in reply to para 6 (g) it is stated that the applicant is not entitled to any salary or allowances for the period he did not work as Extra Departmental Delivery Agent, Majhila neither any salary or allowance is admissible during the period the applicant was kept off duty.
16. That in reply to para 6 (h) it is submitted that the applicant received the removal order on 6.10.1989.
17. That ~~the~~ contents of para 7 are not admitted. No application/representation/appeal was received by the deponent regarding the order of his removal from service.
18. That in reply to para 8 it is submitted that the ~~the~~ ^{Criminal Appeal} ~~petition~~ No. 377 of 1989 filed by the applicant in the Hon'ble High Court is still pending disposal.
19. That in view of the submissions made in the above paragraphs, the relief sought for in para 9 and interim relief prayed for in para 10 are not admissible and are liable to be rejected.
20. That the contents of para 11 to 13 need no comments.

contd. 7....


A36

-: 7 :-

Wherefore, it is respectfully prayed that in view of submissions made in the above paragraphs, the application filed by the petitioner is not tenable, it lacks merit and is liable to be dismissed with costs.

Lucknow ;

Dated : 16.5.90



Signature of Respondent.

Verification

I, the above named deponent do hereby verify that the contents of paras 1 to 3 of this written statement are true to the best of my knowledge and those of paras 4 to 20 are believed by me to be true based on records and as per legal advice. That nothing material facts has been concealed.

Lucknow ;

Dated : 16.5.90


Signature of Respondent.

In the Central Administrative Tribunal at Lucknow
Bench Lucknow.

C.A. No. 311/1989(L).

A37



Bishwas Kumar Applicant.

vs.

Superintendent of Post Offices,
Hardoi and another

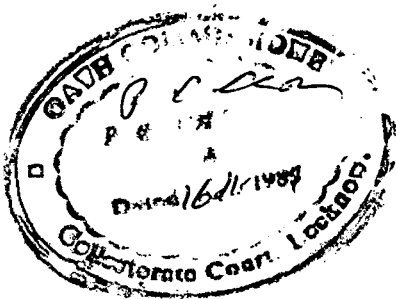
..... Respondents.

Affidavit

I, Bishwas Kumar, aged about 29 years, S/o
Ram Krishna Pandey, R/o Village and Post-Rajhila,
Pargana-Alamnagar, Tehsil Shahabad, District-Hardoi
do hereby solemnly affirm and confirm in oath as under:

1. That the deponent is the applicant and as
such he is fully conversant with the facts of the case
deposed herein.

2. That the deponent was appointed on post of
E.D.D.A. Rajhila by order dated 25.2.1979 and he
joined on the post on the same day and he was falsely
implicated alongwith the others in criminal case on
5.3.1988 and on the F.I.R. lodged by Prasad Kumar
who is the brother of Shri Vinod Kumar Tripathi,
Branch Postmaster, Rajhila because Shri Vinod Kumar



Prasad Kumar

Tripathi wanted to get appointed of his relative in the place of deponent. The deponent was put off duty by order dated 8.10.88 and by order dated 28.2.1989 he was put back in duty and when Shri Vinod Kumar Tripathi, Branch Postmaster, Najhila did not allow the deponent to discharge his duty then the deponent gave an application to respondent no.2 and respondent no.2 directed him to allow the deponent to work.

3. That the order dated 4.10.89 contained in Annexure No.4 was delivered to the deponent on 2.11.89 the reason is that the Branch Postmaster, Najhila was and is Shri Vinod Kumar Tripathi who is the brother of Pramod Kumar and on the initiation of Shri Vinod Kumar Tripathi the F.I.R. was lodged by Pramod Kumar against the deponent alongwith others and being the Branch Postmaster Shri Vinod Kumar Tripathi did not deliver the order dated 4.10.1989 to the deponent in the month of October, 1989. The Branch Post Office Najhila is also in the house of Shri Vinod Kumar Tripathi. The deponent came on 3.11.89 for challenging the order dated 4.10.1989 and the case was prepared on 4.11.1989 and on 5.11.1989 was Sunday and the case was filed on 6.11.1989 without any delay.

Lucknow: *a*

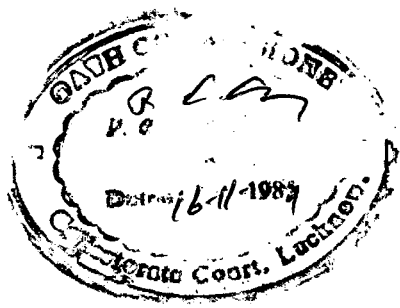
Dated: 16.11.89

Pramod Kumar
Deponent.

Verification

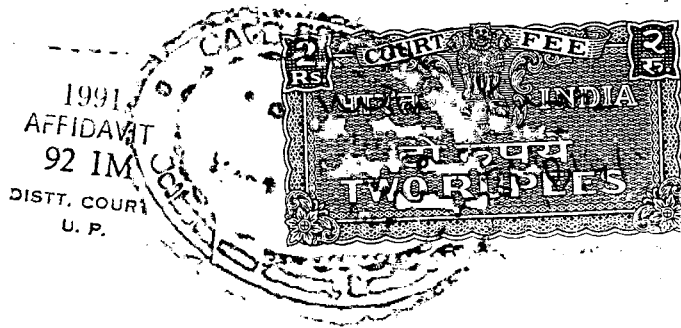
I, above named deponent do hereby verify that the contents of para 1 to 3 are true to my personal knowledge and the contents of para 4 to 5 are believed by me to be correct.

I identify the deponent who has signed before me.
Pramod Kumar
Deponent.
T. K. Singh



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,
LUCKNOW.

O.A. No. 331 of 1989 (L)



Biswas Kumar Applicant

Versus

Superintendent of Post Offices

and another Opposite Parties.

F.F. 3.9.91

Rejoinder Affidavit to the Counter

Affidavit sworn by B.S. Bhaskar.

I, Biswas Kumar, aged about 30 years, son ^{of} Ram Krishna Pandey, resident of Village and Post Manjhila, Pargana Alamnagar, Tehsil Shahabad, District Hardoi, do hereby solemnly affirm and state on oath at under:-

1. That the deponent is the applicant and as such he is fully conversant with the facts of ^{the} case deposed herein.

2. That the contents of para No. 1 of the counter affidavit are denied as alleged. Sri B.S. Bhaskar is not competent to swear the affidavit on behalf of opposite party No. 2 and no authorisation was given by the opposite party No. 2 to Sri B.S. Bhaskar to give counter affidavit on his behalf. The contents of paras Nos. 2 and 3 of the counter affidavit need no comments.

3. That the contents of para No. 4 of the counter affidavit are denied as alleged. The deponent was falsely implicated in a criminal case U/S 148, 307, 149 I.P.C. and he was convicted and under appeal the conviction was challenged and the execution of the sentence was suspended by the Hon'ble High Court during the pendency of appeal. In the said criminal case there were four other persons. The complainant and injured in the criminal case are of the village of the deponent and according to the prosecution the matter was of the girl of defence side. The appointment of the deponent was not provisional. The impugned order challenged in the present case is purely illegal and was passed against the provisions of law and the same is liable to be set aside. The services can not be terminated in arbitrary manner with malafide intention and against the provisions of law on the basis that the injured's side of criminal case has post office of Manjhila in his house and he is the master. It is the duty of the opposite parties to give strict proof about the working of the deponent and the work of the deponent has always been good and he is entitled to be retained on his post. The contents of para 5 of the counter affidavit need no comments and the contents of paras 1, 2, 3(1) to 3(iii) of the application are reiterated.

4. That as regards the contents of para No. 6 of the counter affidavit it is stated that Sub Divisional Inspector (S.D.I.) North, HarDOI had no jurisdiction to pass any order against the deponent. The conviction awarded against the deponent was suspended by the Hon'ble High Court. The rules mentioned in the counter affidavit are applicable in the case of deponent



The contents of para No. 3(iv) of the application are reiterated.

5. That the contents of para 7 of the counter affidavit are denied. For getting the departmental remedy the deponent filed appeal but no remedy was given to the deponent saying that his appeal is not maintainable, the same is being dismissed and order of the appeal was also not supplied to the deponent due to the manipulation of Post Master of Post Office, Manjhila who is the main person for falsely implicating the deponent in criminal case. The application is tenable and is liable to be allowed. The contents of paras 4 and 5 of the application are reiterated.

6. That as regards the contents of paras Nos. 8, 9 and 10 of the counter affidavit it is stated that the sentence awarded in appeal was suspended hence there is no material against the deponent. The content of para 5, 6(a) and 6(b) of the application are reiterated.

7. That as regards the contents of para 11 of the counter affidavit it is stated that according to opposite parties the deponent was removed from service as he was convicted but without giving opportunity of being heard the deponent can not be removed from service. The representation had been made but the same was not considered. The other contents of the counter affidavit are denied. The contents of para No. 6(c) of the application are reiterated.

8. That the contents of paras 12, 13 and 14 of the counter affidavit are denied except the accepted



Admission made

facts. The removal is purely illegal. The conviction was suspended and on the basis of conviction the deponent can not be removed from service. The appeal is pending then how the sentence can be set aside at the time of filing the appeal. The order of removal was not passed fairly and correctly. The contents of paras 6(d), 6(e) and 6 (f) of the application are reiterated.

9. That the contents of paras 15 to 20 of the counter affidavit are denied except the accepted facts. The deponent has worked and when he was not allowed to discharge his duty by the opposite parties and the deponent has not committed any fault in discharging his duties he is entitled to get all the salaries and he should be deemed to be in service. It is totally false that the removal order was received by the deponent on 6-10-90 and no charge was taken from the deponent and he is still holding charge and is deemed to be in service. The departmental remedy was availed by the deponent and the representation was filed by him. The deponent is entitled to get all the reliefs sought by him. The contents of paras Nos. 6(g), 6(h), 7, 8, 9, 10, 11, 12 and 13 of the application are reiterated.

10. That the deponent can not be removed from service without giving him opportunity of being heard. The order was passed in violation of the principles of natural justice and Articles 14, 16 and 311 of the Constitution of India. The impugned order is illegal as held by the Hon'ble High Court and Hon'ble Supreme Court in several cases.

Dated Lucknow
August 30, 1991.

[Signature]
Deponent.

(5)

A43

Verification

I, Biswas Kumar, the deponent, do hereby verify that the contents of paras 1 to 10 of this Rejoinder Affidavit are true to my own knowledge. No part of it is false and nothing material has been concealed. So help me God.

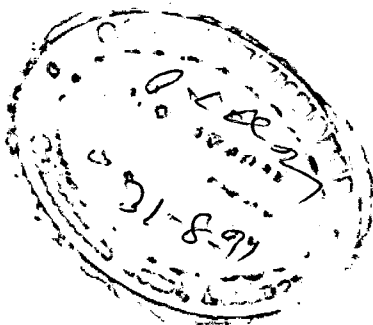
Signed and verified this 31st day of August 1991 in the court compound at Lucknow.

Dated Lucknow
August 31, 1991.

Biswas Kumar
Deponent.

I identify the deponent who has signed before me.

Janardan Prasad
Advocate.



31-8-91
Janardan Prasad
Advocate
31-8-91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,
LUCKNOW.

O.A. No. 331 of 1989 (L)

B
82

Biswas Kumar Applicant

Versus

Superintendent of Post Offices

and another Opposite Parties.

Rejoinder Affidavit to the Counter

Affidavit sworn by B.S. Bhaskar.

I, Biswas Kumar, aged about 30 years, son ^{of} Ram Krishna Pandey, resident of Village and Post Manjhila, Pargana Alamnagar, Tehsil Shahabad, District Hardoi, do hereby solemnly affirm and state on oath at under:-

1. That the deponent is the applicant and as such he is fully conversant with the facts of ^{the} case deposed herein.

2. That the contents of para No. 1 of the counter affidavit are denied as alleged. Sri B.S. Bhaskar is not competent to swear the affidavit on behalf of opposite party No. 2 and no authorisation was given by the opposite party No. 2 to Sri B.S. Bhaskar to give counter affidavit on his behalf. The contents of paras Nos. 2 and 3 of the counter affidavit need no comments.

B
83

3. That the contents of para No. 4 of the counter affidavit are denied as alleged. The deponent was falsely implicated in a criminal case U/S 148, 307, 149 I.P.C. and he was convicted and under appeal the conviction was challenged and the execution of the sentence was suspended by the Hon'ble High Court during the pendency of appeal. In the said criminal case there were four other persons. The complainant and injured in the criminal case are of the village of the deponent and according to the prosecution the matter was of the girl of defence side. The appointment of the deponent was not provisional. The impugned order challenged in the present case is purely illegal and was passed against the provisions of law and the same is liable to be set aside. The services can not be terminated in arbitrary manner with malafide intention and against the provisions of law on the basis that the injured's side of criminal case has post office of Tanjhila in his house and he is the master. It is the duty of the opposite parties to give strict proof about the working of the deponent and the work of the deponent has always been good and he is entitled to be retained on his post. The contents of para 5 of the counter affidavit need no comments and the contents of paras 1, 2, 3(1) to 3(111) of the application are reiterated.

4. That as regards the contents of para No. 6 of the counter affidavit it is stated that Sub Divisional Inspector (S.D.I.) North, Har'oi had no jurisdiction to pass any order against the deponent. The conviction awarded against the deponent was suspended by the Hon'ble High Court. The rules mentioned in the counter affidavit are applicable in the case of deponent.

(3)

13
84

The contents of para No. 3(1v) of the application are reiterated.

5. That the contents of para 7 of the counter affidavit are denied. For getting the departmental remedy the deponent filed appeal but no remedy was given to the deponent saying that his appeal is not maintainable, the same is being dismissed and order of the appeal was also not supplied to the deponent due to the manipulation of Post Master of Post Office, Manjhila who is the main person for falsely implicating the deponent in criminal case. The application is tenable and is liable to be allowed. The contents of paras 4 and 5 of the application are reiterated.

6. That as regards the contents of paras Nos. 8, 9 and 10 of the counter affidavit it is stated that the sentence awarded in appeal was suspended hence there is no material against the deponent. The content of para 5, 6(a) and 6(b) of the application are reiterated.

7. That as regards the contents of para 11 of the counter affidavit it is stated that according to opposite parties the deponent was removed from service as he was convicted but without giving opportunity of being heard the deponent can not be removed from service. The representation had been made but the same was not considered. The other contents of the counter affidavit are denied. The contents of para No. 6(c) of the application are reiterated.

8. That the contents of paras 12, 13 and 14 of the counter affidavit are denied except the accepted

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85

facts. The removal is purely illegal. The conviction was suspended and on the basis of conviction the deponent can not be removed from service. The appeal is pending then how the sentence can be set aside at the time of filing the appeal. The order of removal was not passed fairly and correctly. The contents of paras 6(d), 6(e) and 6 (f) of the application are reiterated.

9. That the contents of paras 15 to 20 of the counter affidavit are denied except the accepted facts. The deponent has worked and when he was not allowed to discharge his duty by the opposite parties and the deponent has not committed any fault in discharging his duties he is entitled to get all the salaries and he should be deemed to be in service. It is totally false that the removal order was received by the deponent on 6-10-90 and no charge was taken from the deponent and he is still holding charge and is deemed to be in service. The departmental remedy was availed by the deponent and the representation was filed by him. The deponent is entitled to get all the reliefs sought by him. The contents of paras Nos. 6(g), 6(h), 7, 8, 9, 10, 11, 12 and 13 of the application are reiterated.

10. That the deponent can not be removed from service without giving him opportunity of being heard. The order was passed in violation of the principles of natural justice and Articles 14, 16 and 311 of the Constitution of India. The impugned order is illegal as held by the Hon'ble High Court and Hon'ble Supreme Court in several cases.

Dated Lucknow
August 31 1991.

Deponent.

(5)

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86

Verification

I, Biswas Kumar, the deponent, do hereby verify that the contents of paras 1 to 10 of this Rejoinder Affidavit are true to my own knowledge. No part of it is false and nothing material has been concealed. So help me God.

Signed and verified this 31st day of August 1991 in the court compound at Lucknow.

Dated Lucknow
August 31, 1991.

Deponent.

I identify the deponent who has signed before me.

Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD,
LUCKNOW BENCH, LUCKNOW.

M.P.No. 287 1992.

APPLICATION TO FILE SUPPLEMENTARY COUNTER-AFFIDAVIT.

Union of India & OthersApplicant/Respondents.

In

O.A.No.311 of 1989

Biswas Kumar Applicants

Versus

Union of India & Others Respondents.

To,

The Hon'ble Vice Chairman & his companion members of the afore-
said Tribunal.

The application of the above named Applicant/Respondent most
respectfully.

SHEWETH:-

That certain issues have been raised in the Rejoinder-affidavit
filed by the applicant in the above case which in the interest of
justice have been clarified in the accompanying Supplementary Counter-
affidavit.

PRAYER :-

Wherefore it is respectfully prayed that for the facts & cir-
cumstances mentioned in the Supplementary Counter-affidavit. This
Hon'ble Tribunal may be graciously pleased to take the accompanying
Supplementary on record in the interest of justice for which act of
kind the respondents shall remain grateful as in duty bound.

(DR.DINESH CHANDRA),

Counsel for Respondents.

Filed today
over
9/4/92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD, *A45*

LUCKNOW BENCH, LUCKNOW.

SUPPLEMENTARY COUNTER-AFFIDAVIT ON BEHALF OF RESPONDENTS.

In

O.A.NO.311 of 1989 (L)

Biswas Kumar Applicant

Versus

Union of India & Others Respondents.

I, R.M.Misra, aged about 56 years, son of Shri Sri Ram Misra, Superintendent of Post Offices, Hardoi Division, do hereby solemnly affirm and state as under :-

1. That the deponent has read the rejoinder-affidavit filed by the applicant has understood the contents thereof. He is well conversant with the facts of the case deposed hereinafter.
2. That the deponent is fully competent to swear this affidavit on behalf of respondent No.2 also as the deponent is his next higher authority.
3. That in the rejoinder-affidavit certain issues have been

[Signature]
Contd....2/-