

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

OA/TA/RA/CP/MA/PT OA-59 of 20-90

G.S. GirdhApplicant(S)

Versus

U.B.G.Respondent(S)

INDEX SHEET

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B-C. file weeded and destroy

Certified that the file is complete in all respects.

[Signature]
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Signature of S.O.

[Signature]
.....
Signature of Deal. Hand

(A)

20/2/90

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 59 of 1989

APPLICANT(S) Dr. C. S. GILL

RESPONDENT(S) UOI

<u>Particulars to be examined</u>	<u>Endorsement as to result of examination</u>
1. Is the appeal competent ?	Yes
2. a) Is the application in the prescribed form ?	Yes
b) Is the application in paper book form ?	
c) Have six complete sets of the application been filed ?	Yes
3. a) Is the appeal in time ?	
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 authorization/ 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 space ?	Yes
8. Has the index of documents been filed and paging done properly ?	Yes
9. Have the chronological details of representation made and the outcome of such 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

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Particulars to be Examined

Endorsement as to result of examination

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

Y/S

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

Y/S

a) Identical with the Original ?

b) Defective ?

c) Wanting in Annexures

Ans. _____ pages Nos _____ ?

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

No

14. Are the given address the registered address ?

Y/S

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

Y/S

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

N/A

17. Are the facts of the case mentioned in item no. 6 of the application ?

Y/S

a) Concise ?

b) Under distinct heads ?

c) Numbered consecutively

d) Typed in double space on one side of the paper ?

Y

18. Have the particulars for interim order prayed for indicated with reasons ?

Y/S

19. Whether all the remedies have been exhausted.

Y/S

against

CA 59/90 (17)

18-5-90 Hon Mr Justice K. Nath, re
Hon Mr K. J. Roman, AM.

Mr. D.S. Ronthava files counter

The petitioner may file counter rejoinder
within three weeks. Not for order
alongwith CA 58/90 on 28-6-90
when the case may be disposed of
finally, if possible. Interim
order shall continue till
then.

[Signatures]
Am V C

28/6/90

Hon. Mr Justice K. Nath, re.
Hon. Mr K. Chagga, AM.

OR
No RA filed
S.F.O.
w
28/6/90

Learned counsel for the petitioner
files rejoinder to the counter filed
on behalf of respondent No. 3. Mr
Dinesh Chandra appearing on behalf
of the respondent 129 requests
for 4 weeks time to file counter.
The applicant may file rejoinder
within 2 weeks thereafter and
the case be listed for orders
on 9-8-90 when it will also
be examined whether the bench
of Tribunal has jurisdiction over
the case having regard to
the provisions of rule 6 of
the C.A.T procedure rules
1987. The interim order
shall continue till then.

[Signatures]
Am V C

9-8-90

no sitting adj to 29-8-90

Reply filed
w
5/11/90

Adj to 4-11-90

59/90 L

4.12.90

No setting Adj to 21.1.91

21.1.91

No setting adj to 13.2.91

R filed
L
4/12

13.2.91.

No setting Adj to 1.4.91

1-4-91

Hon Mr. A.B. Godhi, AM
Hon Mr. S.V. Bhand, JM

OR

lane

CA/

filed
S

Heard the learned
Counsel for both the parties.

The case is complete in all
respects for final hearing.

List the case on 17-5-91
when M.P. may also be
disposed of along with O.A.

Till then interim orders
already passed shall continue
to be operative.

JM.

d
AM

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17.5.91

No setting Adj. to 3.9.91

L

AS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL- LUCKNOW BENCH, LUCKNOW.

O.A. No. 58 of 1990.

Dr. P.B.De.Chaudhury..... Applicant.

Versus

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

A N D

O.S. No. 59 of 1990.

Dr. G.S. Gill..... Applicant.

Versus

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

Hon'ble Mr. Justice U.C. Srivastava- V.C.

Hon'ble Mr. A.B. Gorthi- A.M.

(By Hon'ble Mr. A.B. Gorthi- A.M.)

Facts stated in both the above applications being somewhat similar and questions of law raised therein being identical, we are deciding both the cases by this common judgment.

Dr. P.B. De Chaudhury was the General Duty Medical Officer-I (G.D.M.O.-I) in the Office of Deputy Asstt. Director (DAD) in the Central Government Health Scheme (C.G.H.S.), Kanpur during the period 1972 - 75. Dr. Dr. G.S. Gill was the Deputy Assistant Director at that time. There was an allegation that both these doctors in collusion with ~~the~~ Sarva Sri V.S. Misra, V.S. Gupta Pharmacists, carried out un-authorized/ fake purchase medicines resulting in pecuniary loss to the Government. Dr. De Chaudhury is alleged to have caused a loss of Rs. 426.50 P. whereas the amount of loss averred against Dr. G.S. Gill was Rs. 189.35 P. An F.I.R. was lodged, but only V.S. Misra and V.S. Gupta were prosecuted, whereas the case against the applicant was dropped. The Pharmacists were convicted by the Special Judge but, on an appeal, were acquitted by the High Court. As the High Court, in its judgment, observed that there appeared to be a racket of purchasing medicines on fictitious prescriptions present in the office of D.A.D., the matter was raked-up once again by the department and on 18.05.85 charge memos were served up

the applicants followed by separate departmental inquiries.

Sri M. Neelakanthan, C.D.I. of the Central vigilance commission was appointed as the inquiry officer. The applicants, therefore sought permission to be defended by ^a Legal Practitioner. This request of these applicants was however rejected.

At the time of admission of the applications, the Tribunal passed an interim order staying the disciplinary proceedings.

The applicant assailed the disciplinary proceedings on the ground that it was un-just to re-open the case which was closed against them long time back. The allegations in the charge memos pertained to the period of 1974 - 75. Though the two pharmacists were prosecuted, the case against the applicants was dropped for want of evidence. The applicants, therefore contend

that it would be un-just and unfair to proceed against them after a lapse of more than 10 years from the date of the alleged incident in which the money involved was of a paltry sum of Rs. 426.50 P. in respect of Dr. Chaudhury and Rs. 189.35 P. in respect of Dr. G. S. Gill. They further alleged that the respondents' refusal to allow them to engage legal practitioners to defend them was also illegal and un-just.

The respondents while admitting the essential facts of the case refuted the arguments advanced on behalf of the applicants. According to the respondents the cases against the applicants were dropped initially as there was no evidence against them, but when the High Court observed that ^a fraudulent practice was being followed in the office of the D.A.O, whereby fictitious transactions of purchase of medicines were being conducted causing ^{financial} official loss to the Government, the respondents had to initiate ^{de novo} departmental disciplinary action against the applicants.

Dr. Chaudhury has retired from the service on 30.4.87 and Dr. Gill also retired on 28.2.89.

In the case of State of Madhya Pradesh Versus Bani Singh

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(1991) 16 A.T.C. 514, Hon'ble Supreme Court held that where a delay of over 12 years was not satisfactorily explained, the disciplinary proceedings initiated after such a long lapse of time were liable to be quashed. In the instant case we find that there does not appear to be any justification for the respondents to re-open the disciplinary cases against the applicants, which the respondents deliberately closed long time back on the ground that there ^{was} no evidence. The observations made by the High Court referred to a system of fraud being practised by the staff in the office of D.A.O.. It did not necessarily mean that any new evidence or facts were thrown up against the applicants or that the applicants were the actual perpetrators of the fraud. The respondents would have been justified in carrying out a general Administrative enquiry into the ^{at} scandal with a view to ^{detect & b} evolved loop holes in the system of ^{fraudulent} purchase of medicines so that the practice was ~~xxxx~~ put to an end. That ~~x~~ was the true purport of the observations of the High Court.

Keeping in view the totality of the circumstances of these two cases, we find that it would ~~be~~ not only un-justified but grossly un-fair to let the disciplinary proceedings against the applicants to continue. The respondents acted arbitrarily in denying the applicants' request for the engagement of legal practitioners to defend them. In the result the applications are allowed and the disciplinary proceeding initiated against the applicants are quashed. As both the applicants have since retired, the respondents are directed to release the gratuity/leave encashment ~~all~~ amounts and such other amount, if any, due to the applicants within a period of three months from the date of communication of this order.

D.A. No. 58 of 1990 and D.A. No. 59 of 1990 are allowed in the above sense. Parties shall bear their own costs.

[Signature]
 Member (A)
 Dt: May 15, 1992.
 (DPS)

[Signature]
 Vice Chairman

Deputy Registrar(J)
Original Application No. 59 of 1990. (G)

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT, 1985

Dr.G.S.Gill APPLICANT

Versus

Union of India & others RESPONDENTS

I N D E X

Sl.No.	Description of Documents relied upon.	Page Nos.
1.	Application	1 to 21
2.	<u>Annexure No.A-2</u> A photocopy of impugned charge- sheet dated 18.8.1986.	22 to 28
3.	<u>Annexure No.A-5</u> A photocopy of impugned order dated 4.3.1987.	29
4.	<u>Annexure No.A-6</u> A photocopy of impugned order dated 4.3.1987	30
5.	<u>Annexure No.A-8</u> A photocopy of impugned order dated 27.6.1989	31
6.	Vakalatnama	32
	<u>Other documents</u>	
7.	<u>Annexure No.A-1</u> True copy of FIR dated 22.6.1986.	
8.	<u>Annexure No.A-3</u> A photocopy of letter dated 29.8.1986	
9.	<u>Annexure No.A-4</u> A photocopy of letter dated 1.12.1966.	
10.	<u>Annexure No.A-7</u> A photocopy of office memorandum dated 27.5.1987	

AA

- 11. Annexure No.A-9
A photocopy of Appeal to President dated 19.8.1989.
- 12. Annexure No.A-10
A photocopy of application dated 19.8.1989 to the Secretary.
- 13. Annexure No.A-11
A photocopy of Office Memorandum dated 24.10.1989.
- 14. Annexure No.A-12
A photocopy of letter dated 17.1.1990 (proceeding)
- 15. Annexure No.A-13
A true copy of letter dated 16.1.1990.

For use in Tribunal's Office

[Signature]
Counsel for the Applicant.

Date of filing
or

Date of receipt by post

Registration No.

Signature
For Registrar

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Deputy Registrar(J)

In the Central Administrative Tribunal,
Lucknow Bench.

Original Application No. 59 of 1990 (U)

Dr. G.S. Gill, aged about 59 years,
son of Sri Natha Singh, resident of
4-A/33, Tilak Nagar, New Delhi and last
employed as Chief Medical Officer, Central
Government Health Scheme, Dispensary No.26,
Tilak Nagar, New Delhi.

....

APPLICANT

V e r s u s

1. Union of India, through the Secretary,
Ministry of Health and Family Welfare,
New Delhi.
2. Central Vigilance Commission, Government
of India, Bikaner House, Near India Gate,
New Delhi.
3. Delhi Special Police Establishment,
Lucknow Branch, Lucknow.

....

RESPONDENTS

Noted for 20.2.90.
A. C. Singh
20.2.90

W. S. S.

DETAILS OF APPLICATION:

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

(a) Charge-sheet issued by the Deputy Secretary to the Government of India, Ministry of Health and Family Welfare vide office Memorandum No.C.14011/6/85-V & EMR (1) dated 18.8.1986.

(b) Orders issued by the Deputy Secretary to the Government of India, Ministry of Defence vide No.C.14011/6/85-V & EMR(1) dated 4.3.1987, appointing Inquiring Authority in the case, as amended vide No.C.14011/6/85-V & EMR(1) dated 27.6.1989, and subsequent inquiry proceedings.

(c) Orders passed by the Government of India, Ministry of Health and Family Welfare for withholding the payment of retirement gratuity and encashment of leave to the applicant on retirement from service w.e.f. 28.2.1989 (afternoon).

2. **Jurisdiction of the Tribunal.:**

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

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3. Limitation:

The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case:

(1) That the applicant was appointed as Medical Officer in Central Government Health Scheme (hereinafter referred to as the C.G.H.S.) w.e.f. 18.1.1960. Central Health Service was formed on 1.1.1966 and the C.G.H.S. was absorbed in the Central Health Service on 9.9.1966. The applicant was absorbed in the Central Health Service after promotion to General Duty Medical Officer Grade (hereinafter referred to as the G.D.M.O.I.), which post is now known as Senior Medical Officer.

(ii) That the applicant was transferred to C.G.H.S., Kanpur as Deputy Assistant Director (hereinafter referred to as the D.A.D.) to function as Head of Office in April 1972. The applicant worked in the above capacity upto February 1976, when he was transferred to C.G.H.S., Delhi. The applicant was promoted to the next higher grade of Civil Medical Officer (hereinafter referred to as the C.M.O.) on 19.8.1983 and retired from service on attaining the age of superannuation w.e.f. 28.2.1989 (afternoon).

(iii) That the D.A.D. was also officer Incharge and Controller of C.G.H.S. Dispensaries situated

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at R.K. Nagar, Juhi and Civil Lines, Kanpur. Normally, the medicines were supplied from the C.G.S.S., Dispensary, Kanpur. However, in case of non-availability of medicines prescribed by the Specialists of L.L.R. and other associated hospitals located at Kanpur, the same were purchased locally from the open market by preparing indent duly approved by the D.A.D. and the medicines used to be supplied to the patients concerned. Applicant was the D.A.D., C.G.H.S. Kanpur during the period from 1972 to 1975 and the Dr. P.B. De. Choudhury was a G.D.O. Grade I Officer in the office of D.A.D. During the absence of applicant, the D.A.D., the Dr. P.B. De. Choudhury used to officiate as D.A.D. The indents for local purchase of medicines were used to be prepared by Sri V.S. Misra and Sri V.S. Gupta, pharmacists in the Office of D.A.D., C.G.H.S., Kanpur, which was then put up to the applicant as D.A.D. for approval.

(iv) That allegedly some medicines were indented and purchased during the period from 1972 to 1975 on the basis of forged prescriptions by the Pharmacists Sri V.S. Misra and Sri V.S. Gupta and collusion of the applicant was also alleged in the racket. On the basis of a source, F.I.R. was recorded under section 154 Cr.P.C. by the Delhi Special Police Establishment, Lucknow Branch (Respondent No. 3) as Crime No. 25 of 1976 under section 420 I.P.C. and 5(2) read with 5(1)(d) of

W. S. K.

Prevention of Corruption Act, 1947 against the applicant and 3 others on 22.6.1976. A true copy of the F.I.R. is being annexed as Annexure No.A-1 to this application.

(v) That the matter was investigated by the Respondent No.3 (Lucknow Branch of Delhi Special Police Establishment) and a prima facie case was made out against Sri V.S.Misra and Sri V.S.Gupta Pharmacists and charge sheets were filed under section 120-B, 420, 468 and 471 I.P.C. and under section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947 in the Court of the Special Judge, Anti Corruption (Central), U.P., Lucknow on 22.2.1977, which were registered as Criminal Cases Nos. 49 of 1977 and 50 of 1977.

(vi) That the said Pharmacists were put on trial, and found guilty of the offences punishable under section 120-B, 420, 468 and 471 I.P.C. and under section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act, 1947 and sentenced to undergo R.I. for one year under section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act and six months R.I. for the offences punishable under section 120-B, 420, 468, and 471 of the I.P.C. All sentences were to run concurrently. It is learnt that some observations were made by the learned Special Judge for the C.B.I. to probe into the matter further & to bring others to books.

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(vii) That it may be stated here that the name of the applicant was already mentioned in the F.I.R. and had the investigating agency found any evidence of the complicity of the applicant in the alleged racket, the charge sheet could have been filed by the C.B.I. against the applicant as well. The observations of the learned Special Judge, as stated in para ((vi) above, are wholly unjustified, uncalled for and have been made in violation of the principles of natural justice.

(viii) That both the pharmacists filed Criminal Appeal Nos. 206 of 1978 and 598 of 1978 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow against the judgment and order passed by the learned Special Judge (Central) Anti Corruption, Lucknow. The appeals were allowed by the Hon'ble High Court and the conviction was set aside. The applicant has learnt that some observations were made by the Hon'ble High Court for taking steps for checking the activities of those involved in the alleged racket.

(ix) That it is stated that after the judgment by the learned Special Judge or after the judgment passed by the Hon'ble High Court, no proceedings were initiated, or enquiry ordered against the applicant by the Departmental authorities. As already stated the C.B.I. had not found any evidence of the applicant's complicity in the alleged racket

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of local purchase of medicines on the basis of forged prescriptions. The applicant was promoted to the post of C.M.O., C.G.H.S. w.e.f. 19.8.1983 which ip-so-facto proves the innocence of the applicant in the case.

(x) That to the utter surprise of the applicant, a charge sheet was issued to him by the Deputy Secretary to the Government of India, Vide office Memorandum No. C.14011/6/85-V & EMR(1) dated 18.3.1986. A perusal of the Article of charge framed against the applicant, as contained in the Annexure I to the charge sheet reveals that the imputation has been made against the applicant for exhibiting serious lack of integrity and acting in a manner unbecoming of a Government Servant in as much as he entered into alleged conspiracy with Sri V.S. Misra and Sri V.S. Gupta, Pharmacists, for misappropriation of money in the purchase of medicines on the basis of false prescriptions and forged indents, by abusing official position as Government Servant. It is further imputed that in pursuance of the objective of the said conspiracy, the applicant is alleged to have committed those acts of omission and commission in collusion with the above said two officials and acquired pecuniary gain for himself and consequently put the Government to a pecuniary loss to the tune of Rs. 189.35 and thus the applicant is alleged to have violated the provisions of Rule 3.1.(i) and (iii) of the C.C.S. (Conduct) Rules, 1964. The

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statements of the imputations of misconduct in support of the Article of Charge are given in Annexure II to the Charge-sheet, which cites three incidents of alleged local purchase of medicines on the basis of forged prescriptions which were approved by the applicant as D.A.D., C.G.H.S. Kanpur. A Photocopy of the Charge-sheet dated 18.8.1986 is being annexed as Annexure No. A-2 to this application.

(xi) That in reply to the charge sheet dated 18.8.1986 (Annexure No. A-2) the applicant, vide his letter dated 29.8.1986, requested for supply of the copies of the statements of the witnesses mentioned in Annexure IV to the charge sheet and also for the photostat copies of the listed documents as mentioned in Annexure III to the charge sheet to enable him to appraise with the charges levelled against him. A Photostat copy of the letter dated 29.8.1986 is being annexed as Annexure A-3 to this application.

(xii) That it was intimated by the Respondent No. 1 vide letter No. C.14011/6/85-V & BMR dated 17.9.1986 that in view of denial of charges by the applicant, an oral enquiry will be held in the matter. It was further intimated that the applicant will be provided with full opportunity for the inspection of documents, as provided under C.C.S. C.C.A.) Rules, 1965.

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(xiii) That the applicant again submitted an application on 23.9.1986 to the respondent no.1 for supply of the copies of the statements of the listed witnesses alongwith the Photo-copies of the listed documents. The applicant had stated that under para 8 of, the Government of India, Ministry of Home Affairs O.M. No.F.30/5/61-AVD dated 25.8.1961 he was entitled to get the copies of the statements of the witnesses and Photo copies of the listed documents. The applicant also cited the judgment of the Hon'ble Supreme Court in Kashi Nath Versus Union of India (1986 3 SCC 229) in this regard . The documents were, however, not supplied to the applicant, and it was intimated by the respondent no. 1 vide letter No.C.14011/6/85-V & EMR dated 12.11.1986 that the request of the applicant for the inspection of the documents/copies of statement of the witnesses cannot be acceded to at that stage.

(xiv) That the applicant submitted his reply vide his letter dated 1.12.1986 denying all the charges levelled against him and wished to be heard in person. A Photostat copy of the letter dated 1.12.1986 is being annexed as Annexure No. A-4 to this application.

(xv) That vide Order No.C-14011/6/85-V &EMR (1) dated 4.3.1987, Sri S.Lahiri, C.D.I., Central Vigilance Commission was appointed as Inquiring authority to

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inquire into the alleged charges framed against the applicant, and another order of same number and date was passed appointing Sri Nagendra Prasad, Sub-Inspector, C.B.I., Lucknow as the Presenting Officer. Photostat copies of the both the orders dated 4.3.1987 are being annexed as Annexure Nos. A-5 and A-6, respectively, to this application.

(xvi) That it was intimated by Sri S. Lahiri, C.D.I. vide his letter No.57/SL/246 dated 27.5.1.6.

1987 that the inquiry will be held on 19.6.1987 at 10.30 hours in the office of the Inquiring Authority at New Delhi. A Photostat copy of letter dated 27.5.1.6. 1987 is being annexed as

Annexure A-7 to this application. The respondent No.1 vide O.M.No.C.14011/6/85-V & EMR dated 18.6.1987 asked the applicant to attend the preliminary hearing on 19.6.1987 at 10.30 hours in the office of the Inquiring Authority, as intimated vide letter dated 27.5.1.6. 1987 (Annexure No.A-7)

(xvii) That the applicant submitted an application to the President of India, through the respondent No.1, on 22.6.1987 to allow him to engage a legal practitioner to defend him. The applicant has requested for permission to engage legal practitioner for the following reasons:-

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- (a) that the cases being presented by a trained prosecutor of the C.B.I.
- (b) that the number of listed documents is very large.
- (c) that the number of witnesses in the case is also sizeable.

The applicant also cited that decision of Hon'ble Supreme Court in G.L. Subramaniam Versus The Collector of Customs-(1973) 2 SCC 488 in which the Hon'ble Supreme Court had struck down the order of punishment for the simple reason that the disciplinary authority had not allowed the delinquent official to engage a legal practitioner to defend him when the prosecution case being handled by a trained prosecutor of the C.B.I. The applicant sent a reminder on the subject vide his letter dated 26.6.1986.

(xviii) That the preliminary hearing of the case was held on 19.6.1987 in the office of Sri S. Lahiri, C.D.I. Central Vigilance Commission at New Delhi and the applicant attended the same. In the hearing, the applicant brought to the notice of the Inquiring Authority that he had appealed to the President for allowing him to engage legal practitioner, to defend in the inquiry and requested that till the disposal of appeal, the proceedings be kept in abeyance. The Presenting officer informed that out of 33 documents he was able to procure only 10 documents. Keeping in view, the hearing of the case was adjourned to be taken up only after decision on the appeal of

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the applicant. The Presenting Officer was directed to procure all the prosecution documents in the meantime.

(xix) That vide order No.C.14011/6/85-V & EMR (1) dated 30.6.1989, Sri M.Neelankantan, C.D.I. was appointed as Inquiring Authority in place of Sri S.Lahiri for the reasons not known to the applicant. A Photostat copy of the order dated 30.6.1989 is being annexed as Annexure No.A-8 to this application.

(xx) That in the meantime the applicant retired from service on attaining the age of superannuation w.e.f. 28.2.1989 (afternoon). The applicant, therefore, moved an application on 19.8.1989 to the President of India, through the respondent No.1, giving all the facts and circumstances of the case and prayed that in view of his 29 years of excellent service the proceedings may be dropped at such a belated stage. A Photostat copy of the application dated 19.8.1989 is being annexed as Annexure No.A-9 to this application. On the same date, the applicant also submitted another application to the respondent No.1 requesting for payment of leave encashment without further delay. It was also mentioned by the applicant that his D.C.R. gratuity amounting to about Rs.80,000/- was already withheld. A photostat copy of the application dated 19.8.1989 is being annexed as Annexure No.A-10 to this application.

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(xxi) That vide order No.C.14011/6/85-V & EMR (1) dated 6/11. 10.1989, Sri S.Qamar Ali, Sub-Inspector, C.B.I., Lucknow has been appointed as Presenting officer in place of Sri Nagendra Prasad earlier appointed. It may be stated here that change of the Inquiring Authority and the Presenting officer has further delayed the proceedings causing more harassment to the applicant.

(xxii) That vide order No.C-14011/6/85-V & EMR(1) dated 24.10.1989, it was intimated that the Disciplinary Authority has considered the applicant's request for engagement of a legal practitioner and decided not to accede to the same. The applicant is advised to state that the decision of the Disciplinary Authority has been given without application of mind and without proper appreciation of peculiar facts and circumstances of the case, arbitrarily and in violation of Article 14 of the Constitution. A Photostat copy of the office Memorandum dated 24.10.1989 is being annexed as Annexure No.A-11 to this application.

(xxiii) That the Inquiring Authority, who was appointed on 27.6.1989 intimated vide letter No. 59/C.D.I./MM/58-59 dated 29.12.1989 that the final hearing of the case will be held in his office on 17.1.1990 at 10.00 a.m. It may be stated here that the decision of the Disciplinary Authority on the application was communicated vide O.M.dated 24.10.1989 (Annexure

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A-11), but it took about 2 months for the Inquiring Authority to send intimation for hearing on 17.1.1990.

(xxiv) That hearing of the case was held on 17.1.1990, as Scheduled. However, the Presenting Officer was not present. It was ordered by the Inquiring Authority that the applicant should get in touch with the Presenting Officer and inspect the listed documents. A Photostat copy of the proceedings ~~on 17.1.1990~~ of 17.1.1990 is being annexed as Annexure A-12 to this application. No next date has been fixed for hearing in the Inquiry proceedings. The applicant vide his letter dated 18.1.1990 sent a photostat copy of the proceedings to the Presenting Officer and requested to intimate when the listed documents will be made available. A true copy of the letter dated 18.1.1990 is being annexed as Annexure A-13 to this application. It may, however, be stated that no intimation has been given by the Presenting Officer about inspection of the listed documents, as per orders of the Inquiring Authority.

(xxv) That it is obvious that the charge sheet was inordinately delayed and the Inquiry is not proceeding despite full co-operation of the applicant. The Presenting Officer is not available and the proceedings are lingering on and the applicant is being unnecessarily harassed for a highly belated trivial issues. There is no purpose ~~or~~ or basis for holding the Inquiry against the applicant.

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(xxvi) That after retirement, the gratuity of the applicant and encashment of earned leave to his credit have been withheld arbitrarily and malafide, causing financial loss to the applicant. It may not be out of place to mention here that had the amount of gratuity and encashment of leave have been paid to the applicant, he would have earned interest from Bank at the rate of more than 12% per annum on fix deposits.

(xxvii) That under the circumstances, the charge-sheet and the inquiry proceedings against the applicant are liable to be quashed and he is entitled to get the D.C.R. gratuity and encashment of leave, due to him, together with interest at ~~the~~ a minimum rate of 12% p.a. on the total amount.

5. Grounds for relief with legal provisions:

- (A) Because the applicant is innocent and he had accorded the approval for local purchase of medicines in good faith.
- (B) Because there is no ~~pr~~ evidence of the complicity of the applicant.
- (C) Because the C.B.I. itself had found no evidence to charge the applicant in the case

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-16-

- (D) Because even the officials concerned against whom the C.B.I. had made out a prima facie case have been acquitted in appeal by the Hon'ble High Court.
- (E) Because the charge sheet was issued to the applicant after more than 10 years of the alleged occurrence. Such a long delay vitiated the proceedings instituted by the Department against the applicant.
- (F) Because in the meantime, the applicant was promoted to the post of C.M.O., C.G.H.S. and on this grounds also the Departmental Inquiry cannot be sustained.
- (G) Because the matter being more than 15 years old now, the applicant is not in a position to recollect the facts and defend himself effectively.
- (H) Because, the appeal of the applicant to engage a local practitioner has been rejected by the Disciplinary Authority arbitrarily and without application of mind, which is violative of Articles 14 and 16 of the Constitution.
- (I) Because there is no co-operation from the Presenting officer even at this belated stage to finalise the Inquiry Proceedings expeditiously.

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- (J) Because the D.C.R. gratuity and encashment of leave have been wrongly and arbitrarily withheld and not paid to the applicant.
- (K) Because the applicant is entitled to early payment of D.C.R. gratuity and encashment of leave together with interest at a minimum rate of 12% p.a.
- (L) Because the alleged misconduct is a trivial one and no action can be taken for such an alleged trivial act at such a belated stage.

6. Details of the remedies exhausted:

The applicant has already retired from service on 28.2.1989 (afternoon), as such no departmental remedies have been availed.

7. Matters, not previously filed or pending with any other Court.

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

8. Reliefs sought:

In view of the facts mentioned in para 6

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above the applicant prays for the following
reliefs:-

- (a) charge sheet issued vide O.M.No.C.14011/6/85-V & EMR (1) dated 18.8.1986 (contained in Annexure A-2 to this Application) may please be quashed.
 - (b) Orders No.C.14011/6/85-V & EMR (1) dated 4.3.1987, as modified subsequently (contained in Annexures A-5, A-6 and A-8 of the application) and subsequent inquiry proceedings may please be quashed.
 - (c) Order or directions may please be issued to the respondent no.1 for payment of gratuity and encashment of leave to the applicant, together with interest at a minimum rate of 12% per annum or as deemed appropriate by this Hon'ble Tribunal.
 - (d) any other relief as may be considered appropriate by this Hon'ble Tribunal in the circumstances of the case.
 - (e) allow the cost to the applicant.
9. Interim Order, if any prayed for:-

pending final decision on the application,
the applicant seeks the following interim relief:

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Ans

The Inquiry proceedings before the Inquiring Authority, Sri N. Neelankantam, C.D.I. in the office of Respondent No. 2 may kindly be stayed during the pendency of this application.

10. In the event of application being sent by registered post, it may be stated whether the applicant desire to have oral hearing at the admission stage and if so, he shall attach a self addressed Post Case or Inland letter, at which intimation regarding the date of hearing could be sent to him.

Not applicable. The application is being presented through counsel who will appear at the admission stage.

11. Particulars of Bank Draft/Postal Order filed in respect of the application fee:

High Court, Lucknow Post Office
I.P.O. No. 02-409862 dated 20.2.1990 for Rs. 50.00

12. List of documents:

1. Annexure No. 1A- A true copy of F.I.R. dated 22.6.1976.
2. Annexure No. 2A- A Photocopy of Charge-sheet dated 18.8.1986.
3. Annexure No. 3A- A Photocopy of the letter dated 29.8.1986.
4. Annexure No. A-4- A Photocopy of the letter dated 1.12.1986.
5. Annexure No. A5- A Photostat copy of order dated 4.3.1987, appointing Sri S. Lahiri,

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as Inquiring Authority.

- 6. Annexure A-6 A Photostat copy of order dated 4.3.1987, appointing Sri Nagendra Prasad as the Presenting Officer.
- 7. Annexure A-7 A Photostat copy of letter dated 27.5.1987.
1.6.
- 8. Annexure A-8 A Photostat copy of letter dated 27.6.1989.
- 9. Annexure A-9. A Photostat copy of the application dated 19.8.1989.
- 10. Annexure A-10. A Photostat copy of the application dated 19.8.1989.
- 11. Annexure No. A-11. A Photostat copy of letter No.C. 14011/6/85-V & EMR dated 24.10.1989.
- 12. Annexure No. A-12. A Photocopy of letter dated 17.1.1990
- 13. Annexure No. A-13. A true copy of letter dated 18.1.1990.

Lucknow Dated:
Feb. 20th, 1990

Asliem

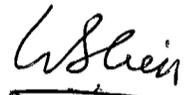
Signature of the Applicant.

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Verification.

I, Dr. G.S. Gill, s/o Sri Natha Singh, aged about 59 years, last employed as Chief Medical officer, Central Govt. Health Scheme, Dispensary No.26, Tilak Nagar, New Delhi, resident of 4-A/33, Tilak Nagar, New Delhi, do hereby verify that the contents of paras 1,4 (i) to (xxvii), 6, 7, 10, 11 and 12 are true to my personal knowledge and contents of those of paras 2, 3, 5 8 and 9 are believed bby me to be true on the basis of legal advice and that I have not suppressed any material fact.

Lucknow Dated:
Feb. 20th, 1990


Signature of Applicant.

To,

The Registrar,
Central Administrative Tribunal,
Lucknow.

In the Central Administrative Tribunal, Lucknow
B e n c h

(22)

Original Application No. of 1990
Dr. G.S. Gill Versus Union of India & others

Annexure No. A-2

No. C.14011/6/85-V & BMR(1)
Government of India
Ministry of Health & Family Welfare

New Delhi, Dated 18.8.86

OFFICE MEMORANDUM

The President proposes to hold an inquiry against Dr. G.S. Gill, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (ANNEXURE I). A Statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (ANNEXURE II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (ANNEXURE III & IV)

2. Dr. G.S. Gill is directed to submit within 10 days of the receipt of this Memorandum, a written statement of his defence and also to state whether he desires to be heard in person.
3. He is informed that an inquiry will hold only in respect of those articles of charge as are not admitted. He should, therefore specifically admit or deny each article of charge.
4. Dr. G.S. Gill is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS (CCA) Rules, 1965 or the orders/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex-parte.
5. Attention of Dr. G.S. Gill is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Dr. G.S. Gill is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.
6. The receipt of this Memorandum should be acknowledged.
By order and in the name of the President.

To

(S.P. Goswami)
Deputy Secretary to the Govt. of India

Dr. G.S. Gill,
Chief Medical Officer, C.G.H.S. Dispensary, Tilak Nagar, New Delhi.

By: REGD.
A/D

T.C.

(C. Singh)
Adv.

Received
in 21.8.86
A/D

ANNEXURE I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST DR.G.S.GILL, FORMERLY DEPUTY ASSISTANT DIRECTOR, CGHS, KANPUR AND PRESENTLY WORKING AS CHIEF MEDICAL OFFICER, CGHS, DELHI

ARTICLE I : That the said Dr.G.S.Gill, A GDO Grade I officer of Central Health Service while functioning as Deputy Assistant Director, Central Govt. Health Scheme, Kanpur exhibited serious lack of integrity and acted in a manner unbecoming of a Govt.servant in as much as he entered into a conspiracy with Shriv.S.Mishra and Shri V.S.Gupta, both officials of the CGHS, Kanpur, for misappropriation of money in the purchase of medicines on the basis of false prescriptions and forged indents by abusing their official position as Govt. Servants. In pursuance of the objectives of the said conspiracy, Dr.G.S.Gill committed these acts of omission and commission in collusion with above said other two officials and acquired pecuniary gain for himself and consequently put the Govt. to a pecuniary loss to the tune of Rs.189-35 only. Dr.G.S.Gill has thus violated the provisions of Rule 3.1.(i) and (iii) of CCS(Conduct) Rules,1964

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST DR.G.S.GILL, EX-DAD, CGHS, KANPUR AND PRESENTLY CHIEF MEDICAL OFFICER, CGHS, DELHI.

ARTICLE-I

That Dr.G.S.Gill was functioning as Deputy Assistant Director, CGHS, Kanpur during the period 1970-75. In addition, Dr.Gill also functioned as Officer In charge and Controller of CGHS Dispensaries established at R.K.Param, Juhi and Civil Lines at Kanpur. Normally the medicines were supplied to the patients from the Dispensary.. However, in the event of non-availability of medicines prescribed by the Specialists of LIR and other Associated Hospital located in Kanpur, the same were purchased from the open market by preparing an indent.. which was to be approved by DAD for supply to concerned patients.

On 26.8.74, one Shri E.K.Misra (Token No.9362) was admitted in GCVH Medical College and Associated Hospital, Kanpur. A forged prescription was made by Shri V.S.Misra, Pharmacist, CGHS, Kanpur in the name of Shri E.K.Misra in which the requirement of six pieces each of Gysona bandage and plain bandage (6" size) were shown as prescribed by Dr.A.K.Gupta. These items were valued at Rs.68.35. This forged prescription was approved by Dr.G.S.Gill and accordingly an authority slip was prepared by Shri V.S.Misra and these items were procured by him.

A similar forged prescription dated 30.8.74 in the name of some patient Shri E.K.Misra was again prepared by Shri V.S.Misra, purported to have been prescribed by Dr.S.C.Gaur. This was again approved by Dr.G.S.Gill for purchase of medicines i.e. Glucose and Bicozyme Injection costing Rs.73.50/-. The indent was prepared by Shri V.S.Misra and the medicines were received by him.

A prescription was issued in the name of Shri Vijay Shankar Gupta, Pharmacist by Dr.A.Shukla of LIR Hospital, Kanpur. In this prescription certain additions/alterations were made to insert four more medicines by Shri V.S. Gupta in connivance with Shri Gopal Prasad, a Pharmacist of LIR Hospital, who belongs to his village. Dr.G.S.Gill approved for local purchase of these medi-

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A.C. Singh
Adv.
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cines. The indents were received in the normal course in the CGHS and medicines were accordingly purchased including ones which were added subsequently. The medicines have been received by Shri V.S.Gupta which were valued at Rs.47.50/-

Thus Dr.G.S.Gill became a part of the conspiracy with Shri V.S.Misra, Shri V.S.Gupta and others and thereby facilitated the purchase of medicines on the false/forged prescriptions which were misappropriated in a systematic and organised manner. The racket so created was operating in the dispensaries under Dr.G.S.Gill at Kanpur.

By those above acts, Dr.G.S.Gill displayed lack of integrity and acted in a manner unbecoming of a Government servant contravening, thereby the provisions of Rule 3.1(i) and (iii) of the CCS (Conduct) Rules, 1964.

T. C.

M.C. Singh
Adv.
20/2/90

ANNEXURE III

List of documents on the basis of which article of charge framed against Dr. C.S. Gill, C.M.O. are proposed to be sustained.

1. FIR of RC No. 25/76-Lucknow dt. 22.6.76
2. Prescription dated 2.9.74 in respect of Sh. D. K. Mishra.
3. Authority slip dt. 3.9.74 issued by DAD, CGHS Kanpur to Bombay Medical Stores.
4. Authority slip dt. 31.8.74 issued by DAD, CGHS Kanpur for patient D.K. Mishra.
5. Prescription dated 31.8.74 for patient Sh. D.K. Mishra.
6. Authority slip dated 19.5.75 issued by D.A.D. CGHS Kanpur to Medical Stores, Kanpur.
7. Authority Slip dated 22.5.75 issued by DAD CGHS Kanpur to Bombay Medical Stores.
8. Prescription in respect of Shri. V.S. Gupta dated 25.11.74
9. prescription dt. 28.3.74 in respect of token No.5574 (G.D. Verma).
10. Prescription dated 26.8.75 for patient Sh. V.S. Mishra.
11. Local purchase Issue Register of CGHS Dispensary R.K. Nagar for period 19.11.74 to 25.4.74 containing entries dt. 4.12.74 in respect of Shri. V.S. Gupta.
12. (A-1 to A-5) Leave Applications of Shri. V.S. Mishra. Pharmacist dt. 28.2.74, 19.3.74, 27.3.74, 4.5.74 and 19.6.74.
13. Leave applications A-6 to A-10) of Vijai Shankar Gupta Pharmacist dated 1.8.74, 19.10.74, 6.3.74, 23.2.74 and 19.3.75.
14. Leave applications of Shri G.D. Verma, Pharmacist (A-11 to A-15) dt. 12.1.72, 24.1.73, 8.2.73, 17.2.73 and 7.6.73.
15. Specimen writings of Shri Vimal Swarup Mishra S-1 to S-21.
16. Specimen writings of Sari Vijaya Shankar Gupta S-22 to S-27.
17. Speciman writings of Shri G.D. Verma S-28 to S-34.
18. " " Gukulad S-35 to S-38.
19. " " S.N. Mishra S-39 to S-40.
20. " " R.K. Karkar S-41 to S-44.
21. Gotion of CGHS Calcutta No.DXC-254/76 dt.30.11.76.
22. Seizure Memo dt.1.6.76 for obtaining documents from Sh. Ram Badan, UDC-cum-Cashier, Q/o D.A.D. CGHS Pandu Nagar, Kanpur.

T. C.

(C. S. Gill)
Adv.
20/2/90

- 23. Seizure Memo dt. 31.7.76 for obtaining documents from Shri Vimal Swaroop Mishra, Pharmacist, O/o DAD, CGHS, 117/617 Pandu Nagar, Kanpur.
- 24. Indent dt. 31.8.74 of R.K. Nagar Dispensary containing entries of medicines indented for Sh. G.D. Verma.
- 25. Indent dated 5.5.75 of CGHS Dispensary, R.K. Nagar, Kanpur, containing entries of medicines for local purchase against the name of Shri D.D. Srivastva token No.7967.
- 26. Indent dated 22.5.75 of CGHS Dispensary, R.K. Nagar, Kanpur in respect of patient Shanti Devi token No.7793.
- 27. Indent dated 14.5.75 of Civil Lines Dispensary, CGHS, Kanpur containing entries in respect of Sashida Knatoon token No.4920.
- 28. Indent dated 14.5.75 of R.K. Nagar Dispensary, Kanpur containing entries in respect of Smt. S.K. Das Gupta, token No.7799.
- 29. Indent dated 3.9.74 of CGHS Dispensary Jahi, Kanpur containing entries in respect of Medicines Indented for Shri D.K. Mishra token No.9362.
- 30. Indent dated 3.12.74 of R.K. Nagar Dispensary, Kanpur containing entries in respect of VS Gupta Patient token No.5619, for the local purchase of medicines.
- 31. Seizure Memo dated 31.6.76 for obtaining documents from Dr. P.B. Dey Choudhary, DAD(CMO) CGHS, Kanpur.

32. Index Cards of CGHS Kanpur of following persons:-

<u>INDEX CARD NUMBER</u>	<u>NAME OF THE GOVT. EMPLOYEES</u>
4920	Syed Abbas Hussain
7967	Shri K.K.Nigam
5574	Shri G.D. Verma
5619	Shri V.S. Gupta
7799	Shri S.Das Gupta
9362	Shri D.K. Mishra
7793	Shri Surya Nath Mishra

33. Connected bills of Bombay Medical Stores 58/60 Birhana Road Kanpur.

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R.C. Singh
Adv.
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ANNEXURE IV

The list of witnesses by which the article of charge framed against Dr. C.S. Gill, CMO, CGHS, Delhi are proposed to be sustained.

1. Dr. A.K. Rastogi, Orthopaedics, Post Graduate Hostel Room No.12, Medical College, Kanpur.
2. Dr. A.K. Gupta, (Retd) r/o 117/1/3 Pandu Nagar Kanpur.
3. Dr. S.M. Sinha, G.S.V.M. Medical College, Kanpur. r/o 77/1/4 Swaroop Nagar, Kanpur.
4. Dr. A. Shukla, r/o Kusum Kunj, Banglow No.14/60 Civil Lines Kanpur.
5. Shri Syed Abbas Hussain s/o Syed Azuz Hussain r/o 88/412 Humam Bagh, Chaman Ganj, Kanpur, working as clerk in the Head Post Office, Kanpur.
6. Shri K.K. Nigam s/o Shri Ganesh Pd. Nigam r/o Gr.No.A-11 P & T Colony, Kanpur-4 (cantt), working as Head Clerk in the Office of Sr. Suptd. of Post Offices, Kanpur.
7. Shri Keshav Prasad Tripathi s/o Sri J.R. Tripathi r/o village Rudrapur, P.O. Khojai, Distt. Gorakhpur working as LDC in the office of Chief Medical Officer, CGHS, Pandunagar, Kanpur.
8. Shri Ram Badan s/o Shri Pattar Dhar r/o village Kandhrapur P.O. Kamal Sagar, Distt. Azamgarh working as UDC-cum-Cashier in the office of the Chief Medical Officer, CGHS Pandunagar, Kanpur.
9. Shri Hari Lal, LDC working in the office of CMO, CGHS Kanpur.
10. Dr. S. Banerjee, Medical Officer Incharge, CGHS Dispensary, R.K. Nagar, Kanpur.
11. Shri Ram Sajeewan, Pharmacist, CGHS Dispensary R.K. Nagar, Kanpur.
12. Shri Surya Nath Mishra, Chaukidar, Regional Labour Institute, Govt. of India, Sarvodaya Nagar, Kanpur, r/o Village Lauki Misir, P.S. Balhira Bazar, P.O. Kusru Khurd Distt. Basti.
13. Shri Dinesh Kumar Mishra, Peon in the office of CMO, CGHS, Kanpur.
14. Shri W.U. Misbahi s/o Hafiz Enayat Ullah, r/o 99/27 Becon Ganj, Kanpur working as Pharmacist in CGHS Dispensary Civil Lines, Kanpur.
15. Sh. Diwakar Prasad Misra s/o Jamuna Prasad Misra r/o Village Kulha PS Bighapur Distt. Unnao working as sorter in RPS (Administrative Officer) Kanpur.

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- 16. Shri S.K. Gupta, UDC of the office of Iron and Steel-
Controller, 234/7, Acharya Jagdish Bose Road Calcutta-20
- 17. Shri Pradeep Chand Sinha, Medical Officer, Lake Dispensary,
CGHS, P-19, Southern Avenue, Calcutta-29
- 18. Shri B. Mukherjee, Inspector, CBI/SPE Calcutta 13-
Lindsay Street, Calcutta-16.
- 19. Sh. D.D.Goel, Asstt. Govt. Examiner of Questioned
Documents Central Forensic Institutes, (Ministry of
Home Affairs) Govt.of India, 30- Gorachand Road,
Calcutta-14.
- 20. Sh. R.P.Singh, Government Examiner of Questioned
Documents Central Forensic Institutes, Ministry of Home
Affairs, Govt.of India, 30 Gorachand Road Calcutta-14-

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Adv.

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In the Central Administrative Tribunal, Lucknow
B e n c h

(29)

Original Application No. of 1990
Dr. G.S. Gill Versus Union of India & others

Annexure No. A-5

No. C.14011/6/85-V&MR(1)
Government of India
Ministry of Health & Family Welfare

New Delhi, Dated 4 MAR 1987

O R D E R

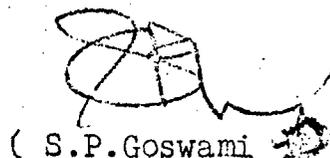
4 MAR 1987

WHEREAS an inquiry under rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, is being held against Dr. G.S. Gill, Chief Medical Officer, CGHS Dispensary, Tilak Nagar, New Delhi;

AND WHEREAS the President considers that an Inquiring Authority should be appointed to inquire into the charges framed against him;

NOW, THEREFORE, the President, in exercise of the powers conferred by sub-rule (2) of the said rule, hereby appoints Shri S. Lahiri, CDI, Central Vigilance Commission as Inquiring Authority to inquire into the charges framed against the said Dr. G.S. Gill;

By order and in the name of the President.



(S.P. Goswami)
Deputy Secretary to the Govt. of India

Copy to:-

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21/4/87

Regd. A-D

1. Dr. G.S. Gill,
Chief Medical Officer,
C.G.H.S. Dispensary No.26,
Tilak Nagar, New Delhi.
2. Shri S. Lahiri,
Commissioner for Departmental Inquiries,
Central Vigilance Commission,
Block 10, Jamnagar House Hutments,
New Delhi.

Handwritten initials
T.C.
A.C. Gij

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In the Central Administrative Tribunal, Lucknow
B e n c h

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Original Application No. of 1990
Dr. G. S. Gill Versus Union of India & others

Annexure No. A-6

No. C. 14011/6/85-V&EMR(I)
Government of India
Ministry of Health & Family Welfare

New Delhi, 4 MAR 1987

O R D E R

WHEREAS an inquiry under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 is being held against Dr. G. S. Gill, Chief Medical Officer, C. G. H. S., Dispensary, Tilak Nagar, New Delhi;

AND WHEREAS the President considers that a Presenting Officer should be appointed to present on behalf of the President the case in support of the articles of charge;

NOW, THEREFORE, the President in exercise of the powers conferred by sub-rule 5(c) of Rule 14 of the said rules, hereby appoints Shri Nagendra Prasad, Sub-Inspector, CBI Lucknow as the Presenting Officer.

By order and in the name of the President.



(S. P. Goswami)

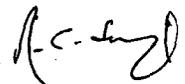
Deputy Secretary to the Govt. of India

Copy to:-

1. Shri Nagendra Prasad,
Sub-Inspector,
Central Bureau of Investigation,
7-Nawal Kishore Road,
L U C K N O W.
2. Dr. G. S. Gill,
Chief Medical Officer,
CGHS Dispensary No. 26,
Tilak Nagar,
New Delhi.
3. Shri S. Lahiri,
Commissioner for Departmental Inquiries,
Central Vigilance Commission,
Block No. 10, Janbhagar House Hatments,
Akbar Road, New Delhi.

Regd. A/D

T. C.



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In the Central Administrative Tribunal, Lucknow
Bench

Original Application No. of 1990
Dr. G.S. Gill Versus Union of India & others

Annexure No. A-8

CONFIDENTIAL

No. C. 14011/6/85-V&EMR(1)
Government of India
Ministry of Health & Family Welfare

New Delhi, Dated

27 JUN 1985

ORDER

WHEREAS an inquiry under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 is being held against Dr. G.S. Gill, Chief Medical Officer, CGHS Dispensary, Tilak Nagar, New Delhi.

AND WHEREAS, Shri S. Lahiri, CDI, Central Vigilance Commission/as Inquiring Authority to look into the charges levelled against Dr. Gill by the President by appointed an order of even number dated the 4th March, 1987;

AND WHEREAS the President considers that some other officer should be appointed as Inquiring Authority in this case in place of Shri Lahiri;

NOW THEREFORE, the President in exercise of the powers conferred by rule 14 of the Central Civil Services (Classification, Control & Appeal,) Rules, 1965 hereby appoints Shri M. Neelakantan, CDI, Central Vigilance Commission as Inquiring Authority in place of Shri Lahiri to inquire into the charges framed against Dr. Gill.

By order and in the name of the President.

Veena Ma
(Veena Maitra)
Director

Copy to:-

1. Dr. G.S. Gill,
Chief Medical Officer,
C.G.H.S., Dispensary No. 26,
Tilak Nagar,
New Delhi.
2. Shri S. Lahiri,
Commissioner for Departmental Inquiries,
Central Vigilance Commission,
Block 10, Jamnagar House,
Akbar Road, New Delhi.
3. Shri M. Neelakantan,
Commissioner for Deptt. Inquiries,
Central Vigilance Commission,
Block 10, Jamnagar House,
Akbar Road, New Delhi.

Recd on 7.7.88

T. C.
[Signature]
Adv
20.2.90

In the Hon'ble Central Administrative Tribunal, Lucknow Bench
 व अदालत भीमान महोदय
 [वादी अपीलान्ट] श्री G. S. Gill का वकालतनामा
 प्रतिवादी [रेस्पाडेन्ट] O. A. No. of 1990

AM



वादी (अपीलान्ट)

Dr. G. S. Gill

vs.

Union of India and others बनाम

प्रतिवादी (रेस्पाडेन्ट)

नं० मुकद्दमा

सन्

पेशी की ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री R. C. Singh, Advocate

(Registration No. 2388/1987)

व A. R. Khan, Advocate

वकील

महोदय एडवोकेट

नाम अदाएत
 मुकद्दमा नं०
 नाम फरीकन

को अर्पना 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 जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया लसूब करें या सुलहनागा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रुपया जमा करे या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होमा में यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिमा प्रमाण रहे और समय पर काम आवे ।

W. Khan

हस्ताक्षर

साक्षी (गवाह) ... साक्षी (गवाह) ...

दिनांक ... 20th ... महीना February ... सन् १९९० ई०

स्वीकृत

f.c. Smith
 Adv.
 20.2.90

(22)

In the Central Administrative Tribunal, Lucknow
B e n c h.

Original Application No. 59 of 1990

Dr. G.S.Gill Applicant
Versus
Union of India & others . Opposite-Parties.

Annexure No. A-1

Delhi Special Police Establishment, Lucknow Branch:

First Information Report.

(Recorded U/S. 154 Cr.P.C.)

Crime No. 25 date and Time of Report: 22.6.76 at 19.25 hrs.

Place of occurrence with State: Kanpur, U .P.

Name of Complainant or informant with address:

Offences: U/S. 120-B, 420 I.P.C. and
U/S. 5(2) r/w 5(a)(d) of
P.C. Act II of 1947.

Name & address of the accused:
(i) G.S.Gill., DAD.
(ii) P.B.De.Choudhury, DAD.
(iii) V.Swarup Misra, Pharmacist.
(iv) V.S.Gupta, Pharmacist.

R.C. registered

Investigating officer: Shri R.A.Trivedi,
Dy/S.P./C.B.I./SP/I, Lucknow.

Information:

P.B.No. 7176 was registered against Dr.G.S.Gill,
Dr.P.B.De.Choudhary and other on 18.2.1976 on the

T.C.
A.C. Choudhary
20/2

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A-13

basis of a source information that they in collusion with other members of staff and chemist should (showed) purchase of inadmissible items of medicines on the basis of forged prescription etc. and thus pocketed the amount should (showed) spent on the purchase of medicine. From the enquiry the following facts have come to light;

Dr. G. S. Gill, Dy. Asstt. Director, Dr. P. B. De. Choudhry, Dy. Asstt. Director, Vimal Swaroop Misra and Vijay Shanker Gupta, Pharmacists during the period 1970-75 entered into criminal Conspiracy to cheat the department by abusing their official position as much public servants and in purchase of (pursuance) of common object of the said conspiracy they committed the following acts of omission
Dr. G. S. Gill during 1972 purchased inadmissible items, mainly food product amount to Rs. 525.32 in the name of favourable persons. These items did not under formalary of CGHS and were detected by Audit.

-Dr. G. S. Gill purchased locally inadmissible items of Gypsona and plain bandage in the name of Dinesh Kumar Mishra who was a peñon of his office on the basis of a forged and false prescription purported to have been issued by Dr. A. K. Gupta or his house surgeon. The connected entries in the indent were made by Sri Vimal Swaroop Misra, Pharmacist vide indent dated 14.5.75 of CGHS Dispensary, Kanpur. Some medicines were indented by the Medical Officer Incharge the Dispensary Sri Vimal Swaroop Misra added certain items of medicines in the said indent in the name of Shri S. K. Gas Gupta, Token No. 7799 for the purchase of medicines. Shri S. B. Das Gupta was at Culcutta from 10.5.75 to 29.5.75 and did not receive any treatment at Kanpur.

-In the indent dated 22.5.75 of the CGHS Dispensary

T.C.

(Signature)
Adv.
20/2

(Signature)

R.K.Nagar, Kanpur some additions were made by Sri V.S. Misra subsequently in the said indent against the name of Shanti Devi token 7795 Smt. Shanti Devi was in District Basti and did not obtain any treatment during the period of treatment shown in the prescription etc.

- In the indent dated 14.5.75 of Civil Lines Dispensary KNP some additions were made by Sri V.N. Misra in respect of Rashida Khatoon, a fictitious name and not the member of the family of token holder Sri Syed Abbass, Clerk, H.P.C. Kanpur.

- All the entries of these three instances were signed by Dr. P. B. Deo Choudhary as DAD for purchasing medicine and the added medicine were purchased.

- Indent dated 5.5.75 R.K. Nagar Dispy. Kanpur certain entries inserted afterwards for purchase of medicines in respect of fictitious name of BS D.P. Srivastava token no. 7967 made by Sri V.S. Misra which bear the sign of Dr. G.S. Gill.

- Sri V.S. Gupta, Pharmacist obtains costly medicines against a forged prescription by..... then purchased vide indent dated 3.12.74 of R.K. Nagar, CGHS Dispy. Dr. G.S. Gill ordered to purchase medicine.

- The above x fact constitutes offences, punishable U/S. 120-B, 420 I.P.C. and u/s 5(2) r/w 5(2) of PC Act (Act II of 1977) and regular case is therefore, registered and Sri R.A. Trivedi, DSP/CBI, Kanpur is deputed to investigation.

True Copy.

C. Singh
Adv.
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In the Central Administrative Tribunal, Lucknow
B e n c h

AUS

Original Application No. of 1990
Dr. G.S. Gill Versus Union of India & others

Annexure No. A-3

To

Shri S.P. Goswami,
Deputy Secretary to the Govt. of India,
Ministry of Health & Family Welfare,
New Delhi.

Subject: Charge sheet under Rule 14 of the CCS(CCA)
Rules, 1965 - case of Dr. G.S. Gill.

Sir,

I am in receipt of your Office Memorandum No. C-14011/6/85-V & EMR(1) dated the 18th August, 1986 received by me on 21st August, 1986 and to say that before I submit my statement of defence, I may kindly be supplied copies of statements of witnesses mentioned in Annexure-4 to the above said Office Memorandum recorded in the course of preliminary inquiry conducted in the case. I would also request that photo copies of the listed documents, as mentioned in Annexure - 3 to the above said Office Memorandum, may also be furnished to enable me to appraise the charges levelled against me.

Thanking you,

Yours faithfully,

(Signature) 21-8-86

(Dr. G.S. Gill)
Chief Medical Officer
C.G.H.S. Dispensary,
Tilak Nagar, New Delhi

बोमा नहीं NOT INSURED
समाप्त किये डाक टिकटों का मूल्य रु. 3.55
Amount of Stamps affixed
एक रजिस्ट्री* प्राप्त किया
Received & Registered
पाने वाले का नाम
Addressed to
क्रमांक No. 3888
तारीख माह
Date Stamp
पाने वाले अधिकारी के हस्ताक्षर
Signature of Receiving Officer

T.C.
(Signature)
Adv.
20.2.90

In the Central Administrative Tribunal, Lucknow
B e n c h

Pub

Original Application No. of 1990
Dr. G. S. Gill Versus Union of India & others

Annexure No. A-4

To,

Shri S. P. Goswami,
Dy. Secretary to the Govt. of India,
Ministry of Health & Family Welfare,
New Delhi.

Sub: Chargesheet under rule 14 of the CCS(CCA) Rules,
1965. Case of Dr. G. S. Gill. Statement of Defence.

Sir,

I am in receipt of your office Memorandum No. C. 14011/
6/85-VG EMR dated 12.11.1986 (Received on 22.11.1986) and
to state that I deny the charges levelled against me and
that I wish to be heard in person.

Thanking you.

Yours faithfully

G. S. Gill

(DR. G. S. GILL)

C. M. O.

Dated: 1.12.86.

C. G. H. S. Dispensary No. 26,
Tilak Nagar,
New Delhi.

v.p.c.

Shri S. P. Goswami,
Dy. Secretary to the Govt. of India,
Ministry of Health & F.W. ,
Nirman Bhawan,
New Delhi.



T. S. Singh

Adm.

20.2.90

In the Central Administrative Tribunal, Lucknow.
B e n c h

Original Application No. of 1990
Dr. G.S. Gill Versus Union of India & others

Annexure No. A-7

URGENT/~~Hyd~~

Confidential

No. 57/SL/246

Government of India
Central Vigilance Commission

Block No. 10, Gali No. 8,
Jannagar House, New Delhi-110011.

Dated: 27.5.87

OFFICE MEMORANDUM

Subject:- Departmental inquiry against Shri G.S. Gill, Chief Medical Officer, CGHS.

Ref'nce:- Order No.V.14011/6/85-V&EMR/dt. 4.3.87. (i)

The undersigned shall hold the preliminary hearing in the above mentioned departmental inquiry on 19.6.87 at 1030 hours in his office at New Delhi. The charged officer is hereby required to attend the hearing alongwith his defence assistant, if any. The presenting officer is also required to attend the hearings without fail. He must bring all the listed documents with him and the statements of all listed witnesses, in case the same have been recorded during investigation of the case.

2. It may be noted that no witnesses will be examined on the said date. The hearing will proceed ex-parte in case either of the party fails to attend.

(S. Lahiri)

Commissioner for Departmental Inquiries

To
Regd. ✓ Shri G.S. Gill, Chief Medical Officer, CGHS Dispensary, Tilak Nagar, New Delhi.

Regd. Shri Nagendra Prasad, Sub-Inspector, Central Bureau of Investigation, 7-Nawal Kishore Road, Lucknow. He is requested to bring with him all the listed documents for inspection by the CO.

Copy to:- Shri S.P. Goswami, Dy. Secy. to the Govt. of India, Ministry of Health & Family Welfare, Nirman Bhavan, New Delhi. He is requested to direct the CO and the PO to attend the hearing as above.

(S. Lahiri)

Commissioner for Departmental Inquiries

In the Central Administrative Tribunal, Lucknow
B e n c h

Original Application No. of 1990
Dr. G.S. Gill Versus Union of India & others

Annexure No. A-9

The President of India,
New Delhi

Proper Channel : The Secretary, Ministry of Health and Family Welfare, New Delhi.

Subject : Departmental inquiry against Dr. G.S. Gill, C.M.O., (now retired).

Sir,

Kindly refer to Letter No. 89/CDI/MN/58-59, dated 7th August, 1989 from Shri M. Neelakantan, C.D.I., C.V.C., New Delhi addressed to Ms. Veena Maitra, Director in the Ministry of Health and Family Welfare (copy to me). In this connection I have to make the following submissions for your kind consideration and favourable action.

2. In the abovesaid departmental inquiry, the charge sheet was issued to me, about three years back, on 18-8-1986. In the statement of allegations, it is mentioned that subject-matter of these allegations relates to the period 1970-75. Thus, though the subject-matter of the allegations is now more than fifteen years old, the charge sheet itself is pending for the last three years. In the meanwhile I retired from service on superannuation on 26-2-1989.

3. It will be seen from the records that the responsibility for the delay in handling this case is wholly and completely on the Government, as will be clear from the following facts.

(i) More than twelve years were taken in the investigation and issue of charge sheet;

(ii) Even after issue of charge sheet, I applied for permission to engage a legal practitioner on sound and legal grounds on 22-6-1987 but though more than two years have elapsed no decision has been taken on my request despite reminders from me and the proceedings have been kept pending;

(iii) Though it was in full notice of the Government that I was due to retire on 28-2-1989 no action whatever was taken to expedite and finalise the proceedings before that date.

4. My request dated 22-6-1987 for permission to engage a legal practitioner is based on valid grounds, sound logic and legal provisions. It is a case which the CBI took a lot of time to investigate and the subject-matter has been in the courts of law twice - once with the Trial Magistrate and thereafter in appeal before the High Court of Judicature at Allahabad. The judgements of these Courts form important documents of the case. The legal complications involved and the background in which the case was tried by both the abovesaid Courts can be properly appreciated only by a legal practitioner. Besides the case is being presented by a trained Prosecutor of the C.B.I. and is supported by a large number of listed documents and Government witnesses. The case is thus eminently fit in which permission to engage a legal practitioner should have been granted.

5. Now, with my retirement w.e.f. 28-2-1989 the whole complexion of the case changes. Under Rule 9 of the C.C.S. (Pension) Rules, 1972, action can be continued in only those cases where grave misconduct is involved. In the allegations against me the three prescriptions listed amount to Rs.68.35, 73.50 and 47.50 only. In fact, the matter has already been judicially scrutinised by

T.C.

G.S. Gill

Gov.

20.2.90

cc: Mr. P. S. -

119

Page-2

the High Court, Lucknow Bench, who, in their judgement dated the 4th October, 1980 (Criminal Appeal No.598/1978 Vimal Swaroop Misra v. State) have held while acquitting the said official of the CGHS dispensary against whom the C.B.I. had launched the prosecution that there was neither any conspiracy nor any mis-appropriation of medicines and that the medicines indented reached the indenting dispensaries. These allegations cannot be said to be 'grave' by any stretch of imagination, Thus, the allegations deserve to be dropped on my retirement and their continuance will be contrary to the provisions of Rule 9 of the Pension Rules, much more so when the matter relates to fifteen years back and the charge sheet issued in August, 1986 was not processed expeditiously by the Government itself for which delay no blame lies on me at all.

6. Your excellency, I have served the Government with full devotion for ²⁸~~33~~ years in various capacities as a Medical Officer and retired as Chief Medical Officer. I have every hope that the Government shall look into the whole matter in its correct prespective and drop these unnecessary proceedings at this stage. However, ~~in case my request for dropping the proceedings is not granted, I may kindly be allowed permission to engage a legal practitioner in the proceedings.~~

Yours faithfully,

G.S. Gill
19.8.89

(Dr.) G.S. Gill C.M.O. CGHS (Retd.)
4A/33, Tilak Nagar,
New Delhi-110018.

[Handwritten signature]
2/18



In the Central Administrative Tribunal, Lucknow
B e n c h

Original Application No. of 1990
Dr. G. S. Gill Versus Union of India & others

Annexure No. A-10

The Secretary,
Ministry of Health and Family Welfare,
New Delhi.

Subject : Leave Encashment Payment.

Sir,

I retired from service as Chief Medical Officer on 28-2-1989. Although now it is more than five months, I am still awaiting the payment of Leave Encashment due to me. It has neither been paid to me nor the reasons for the delay have been communicated. I find that under Rule 39(3) of the C.C.S. (Leave) Rules, 1972 that the payment of Leave Encashment has to be made in ordinary course except where there is a possibility of some money becoming recoverable from the retired officer on conclusion of the proceedings against him. In this connection I submit that the allegations against me do not involve any recovery from pay nor is there any such charge. In fact, the matter involved has already been judicially scrutinised by High Court, Lucknow Bench, who, in their judgment dated 4th October, 1980 (Criminal Appeal No. 598/1978 - Vimal Swaroop Misra v. State) have held while acquitting the said official of the CGHS dispensary against whom the C.B.I. had launched prosecution that there was neither any conspiracy nor any mis-appropriation of medicines and the medicines indented duly reached the indenting dispensaries. Even otherwise, the amount involved in the three allegations against me is Rs. 68.35, 73.50 and 47.50 only, (total Rs. 189.35). Apparently the big amount of Leave Encashment due to me cannot be with-held or delayed on this ground. I may mention that my D.C.R. Gratuity amounting to about Rs. 80,000/- is already with-held.

2. I, therefore, request that the Leave Encashment due to me on retirement may please be paid to me without further delay.

Yours faithfully

G. S. Gill
19.8.89
(Dr.) G. S. Gill
C.M.O., CGHS (Retd.),
4A/33, Tilak Nagar,
New Delhi-110018.

T. C.
A. C. Singh
20.2.90

In the Central Administrative Tribunal, Lucknow
B e n c h

Original Application No. of 1990
Dr. G. S. Gill Versus Union of India & others

Annexure No. A-11

CONFIDENTIAL

No. C-14011/6/85-V&FMR(1)
Government of India
Ministry of Health & Family Welfare

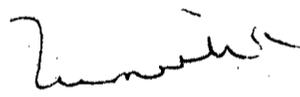
New Delhi, Dated

20.2.90

OFFICE MEMORANDUM

Subject: Departmental inquiry against Dr. G. S. Gill - Request
for engagement of a legal practitioner.

With reference to communication dated the 19th August, 1989 from Dr. G. S. Gill on the above subject, the undersigned is directed to say that the Disciplinary Authority has considered Dr. Gill's request for engagement of a legal practitioner and decided not to accede to the same.


(Veena Maitra)
Director

To

✓ Dr. G. S. Gill
4 A/33, Tilak Nagar
NEW DELHI - 110018.

T. C.



Adv.
20.2.90

In the Central Administrative Tribunal, Lucknow
B e n c h

Original Application No. of 1990
Dr. G.S. Gill Versus Union of India & others

Annexure No. A-12

New Delhi Present: ~~Dr.~~ Dr. G.S. Gill, C.O.1
17.1.90 Dr. P.D. Dey Choudhury, C.O.2

xx.

S. G. A. li Pz
~~PO Shri Nagendra Prasad~~ is not present. However I received a letter yesterday issued by the SP/CBI, Lucknow on 15.1.90 stating that the PO is not able to attend the hearing fixed for today as he is busy in a training programme. I would have expected the CBI to atleast give me advance intimation before the date fixed for preliminary hearing so that intimation could have been given to the C.Os regarding any possible adjournment of the hearing. In future the CBI would keep in view this.

2. The brief hearing is held today. The C.O. has ~~been~~ submitted that he will be giving the particulars of the defence assistant since the Ministry has not agreed to his request for engagement of a legal practitioner. He has been requested to do this in the next 10 days. Meanwhile the inspection of listed documents may be taken up as per mutually convenient arrangements between the C.O. and the P.O. and C.O. may get in touch with the P.O. immediately in this regard. In any case this formality may be completed by end of this month and compliance be submitted by 1st Feb. 1990.

4. Subsequently, the C.O. should submit list of addl. documents, if any, indicating the relevance as well as defence witnesses by 7th Feb. 1990 with a copy to the P.O. The P.O. will be given a direction to show the permitted addl. documents also to C.O. for inspection. As far as possible, the P.O. may give photostat copies of the listed as well as addl. documents to the C.O. for their reference. This formality may also be completed by the end of Feb. 1990 so that regular in the case should be held in March, 1990. This being an old case, both sides are requested to cooperate fully in following the ~~2~~ about time-schedule.

5. Copy ~~meant~~ for C.O. is supplied to him and copy meant for P.O. is sent to him by post.

C.O.1 *Blani*

C.O.2 *[Signature]*

[Signature]
(M. Neelakantan)
C.D.I.

T.C.

[Signature]

Adv

20/2/90

AS
(43)

In the Central Administrative Tribunal, Lucknow Bench,

	Original Application No.	of 1990
Dr. G. S. Gill	...	Applicant
	Versus	
Union of India & others	...	Opp. Parties.

Annexure No. A-13

From:- Dr. G. S. Gill C.M.O. (Retd).
4A/33, Tilak Nagar, New Delhi.

To,

Shri S. Qamar Ali, Presenting Officer,
Sub-Inspector,
Central Bureau of Investigation,
7, Nawal Kishore Road, Lucknow.

Sir,

The brief hearing in the case was held on 17.1.1990 under Shri M. Neelakantam, C.D.I. Central Vigilance Commission a copy of which has been sent to you also.

As desired by the C.D.I., you may kindly inform the convenient date on which you can handover the photocopies of listed documents as well as have the and documents examined by me in my defence assistant while fixing the date kindly in give sufficient notice keeping in view the difficulty in getting train-reservation for journey.

Thanking you.

Yours faithfully
Sd/- ~~Dr~~ G.S. Gill
(Dr. G.S. Gill)

New Delhi.
dated 18.1.1990

True copy.

[Handwritten signature]
20.2

C. S. Gill

CIRCUIT BENCH

LUCKNOW.

OA No. 59 of 1990.

Dr. G.S. Gill Applicant

Vs.

Union of India & others Respondents.

Counter Affidavit on behalf of Respondents No. 3

I, Naresh Prasad Tiwari aged about 48 years
Son of Late Sri K.P. Tiwari R/O L VI/22, Aliganj,
Lucknow, herein-after described as the deponent, do
hereby solemnly affirm and state as under:-

✓ Dy. SP and looking after the work

1. That the deponent is ~~Sub-Inspector~~
of Supdt. of Police, CBI/SPE, Lucknow and
as such he is competent to affirm this affidavit
on behalf of Respondent No. 3 Delhi Special
Police Establishment, Lucknow Branch, Lucknow.
2. That the deponent has read and under-
stood the contents of the claim application and he
is well conversant with the facts of the case
deposed hereinafter.
3. That before giving parawise replies, the following
facts are being stated by way of brief background
to the case:-



Naresh Prasad

- (i) That a case No. RC. 25/76 was registered against Dr. G.S. Gill, Dr. P.B. Dey Choudhury, Vimal Swaroop Mishra and Vijay Shanker Gupta, both Pharmacists for offences U/s 120B/420 IPC and Sec. 5(2) r/w 5(1)(d) of Prevention of Corruption Act., 1947 (Act No.II of 1947).
- (ii) That one chargesheet was filed against Sri V.S. Mishra U/s 120B r/w 420 IPC and Sec. 5(2) r/w 5(1) (d) of P.C. Act, 1947, whereas the other chargesheet was filed against S/Sri V.S. Gupta and Gokul Prasad U/s 120B r/w 420 IPC. and Secs. 468, 471 IPC and Secs. 5(2) r/w 5(1)(d) of P.C.Act, 1947, in the court of Special Judge (Central), Anti-Corruption U.P., Lucknow.
- (iii) That by the above Special Judge Sri V.S. Mishra and Sri V.S. Gupta were convicted whereas Sri Gokul Prasad was acquitted.
- (iv) That Dr. G.S. Gill and Dr. P.B. Dey Choudhury through named as accused No.1 & 2 respectively in the FIR, yet they were not prosecuted for want of conclusive evidence. However, the Special Judge while convicting Sri V.S. Gupta and Sri V.S. Mishra observed that "The circumstances of the case undoubtedly indicate that there was some racket in the concerned dispensaries and DAD(Deputy Addl.Director) office for getting medicines on fictitious prescriptions."
- (v) That S/Sri V.S. Mishra and V.S. Gupta went in appeal before the Hon'ble High Court and they were also acquitted.
- (vi) That departmental action was initiated against Dr. G.S. Gill & Dr. P.B. Dey Choudhury. Both the officers denied the charges. The charged officers



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also made a representation to the President of India with the request for permission to engage a legal practitioner for their defence. The representation was duly considered by the disciplinary authority and it was ultimately rejected mainly on the grounds that the Presenting Officer from CBI was neither a lawyer nor a Prosecuting Officer.

(vii) That Dr. G.S. Gill and Dr. P.B. Dey Choudhury retired on 28.2.89 (AN) and 30.4.87 (AN) respectively, but disciplinary proceedings are still pending against them.

4. That the contents of the Paras 1 to 4 of the claim application need no reply.

5. That the contents of sub-para (i) to (iii) of Para 4 of the claim application need no reply from the answering respondent. The contents of these sub-para may be ascertained from Respondent No.1.

6. That in reply to the contents of sub-para (iv) of para 4 of the claim application, it is submitted that a case was registered as RC. 25/76 with CBI/SPE Branch Lucknow against the petitioner, Dr. G.S. Gill, Dr. P.B. Dey Choudhury, Vimal Swaroop Mishra and Vijay Shanker Gupta for offences u/s 120B/420 IPC and Sec. 5(2) r/w 5(1)(d) of Prevention of Corruption Act, 1947 on 22.6.1976 in the matter of purchase of medicines from the market on the basis of forged and fictitious prescriptions. A true copy of the FIR has already been filed by the Applicant as Annexure No. A-1 to the application. Subsequently on the basis of investigation the name of Sri Gokul Prasad was also added to the list of the accused.



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7. That the contents of sub-paras (v) to (viii) of para 4 of the claim application, being the matter of record, are not denied. However it is submitted:-

(a) That the significant observations from the judgement dated 25.7.1978 of the Special Judge (Central) Anti-Corruption, U.P. Lucknow are reproduced as under:-

 " Before parting with the case I would like to observe that at Kanpur in the department of Central Government Health Scheme a vicious circle was formed of the doctors, the pharmacists ~~and~~ and some other employees, whose functions were to cheat the Central Government by taking out medicines on forged prescriptions in the name of the token-holders of the scheme, and it seems for a long time this racket flourished until it was exploded by the person who lodged the report in this respect with the CBI. I hope the investigating agency will probe further to find out more culprits involved in this matter so that they may also be brought to book like the accused."



(b) That some important relevant observations from the judgement dated 4.9.1980 passed by the Hon'ble High Court in Cr.Appeals No. 206/1978 and 598 of 1978 are also reproduced as under:-

 "The circumstances of the case undoubtedly indicate that there was some racket in the concerned dispensaries and Dy.Additional Director Office for getting medicines on fictitious prescriptions The matter definitely requires departmental probe by the authorities so that some steps are taken for checking the

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activities of those involved in the aforesaid racket. _____."

8. That the contents of Sub-Para(ix) of Para-4 as stated are not admitted and it is submitted that no conclusive evidence about the involvement of the petitioner in the crime was found during the investigation by the CBI. But it was still open ^{to} take-up departmental proceedings. The observations made by the trial court as well as Hon'ble High Court were never challenged by the petitioner. Moreover, the departmental proceedings were initiated against the petitioner by serving memorandum dated 18.8.86. Whereas S/Sri V.S. Mishra and V.S. Gupta were the subordinates of the petitioner and as such it might be presumed that the petitioner will be well acquainted with the handwritings of Sri V.S. Mishra and V.S. Gupta respectively.
9. That in reply to contents of Sub-Para(x) of Para-4 of the claim application, it is submitted that a chargesheet was issued to the petitioner by Dy. Secretary Govt. of India vide Office Memorandum No.C-14011/6/85/V & DAR(II) dated 18.8.86 alongwith the articles of charges as Annexure-I and Statement of Imputation of misconduct as Annexure-II and List of documents as Annexure-III and List of Witnesses as Annexure-IV alongwith the aforesaid memo. A True copy of the aforesaid memo alongwith the four Annexures is filed herewith as combined Annexure No.0-1.
10. That the contents of Sub-Para(xi) to (xiv) of Para-4 need no reply as the same are expected to be replied by Respondent No.1.



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11. That the contents of Sub-Para(xv) to (xvii) of Para-4 relate to Respondents Nos. 1 & 2 and as such they need no reply from the answering Respondent.
12. That the contents of Sub-Paras(xviii) and (xix) of Para-4 of the claim Application need no reply.
13. That the contents of Sub-Para(xx) of Para-4 of the application relate to Respondent No.1 and as such they need no reply from the answering Respondent.
14. That the contention as raised in Sub-Para(xxi) of Para-4 is denied and it is submitted that the applicant Dr. G.S. Gill has himself informed the Enquiry Officer on 19.6.87 that he had made a petition to the President of India for permitting him to engage a legal Practitioner for defending him in the departmental enquiry and as such he requested the Enquiry Officer "To keep the proceedings in abeyance till his appeal is disposed of." Accordingly the Enquiry Officer ordered to keep the proceedings in abeyance and to resume the same after the decision on the petition is communicated to him. This position has been very well admitted by the applicant in the contents of Sub-Para(xviii) of Para-4 of the Claim Application. A true photostat copy of the order sheet dated 19.6.87 of the Enquiry Officer is filed herewith as Annexure No. C-2.



15. That the contentions raised in Sub-Para(xxii) of Para-4 of the application are emphatically denied and the deponent has been advised to state that the decision of the Disciplinary Authority on the question of permitting the charged officer to engage legal practitioner is perfectly legal, just

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(7)

and proper and it is not in any manner arbitrary and in violation of article 14 of the constitution of India or any other provision of the Constitution and the relevant law.

16. That in reply to the contents of Sub-para (xxiii) and (xxiv) of Para-4 of the claim application it is submitted that the Presenting Officer could not attend the hearing on 17.1.90 because he had been pre-occupied with his Computer training and an intimation to this effect had also been sent to the Enquiry Officer.

17. That the position as stated in Sub-para(xxv) of Para-4 of the claim application and the contentions raised therein are emphatically denied. In this regard, it is submitted that there has been no deliberate delay on the part of the department, the Enquiry Officer and the Presenting Officer. In fact the charged officer himself has been adopting delatory tactics during the enquiry proceedings. He was not submitting his reply in time and not asking for inspection of documents before 17.1.90 on which date it was directed by the Enquiry Officer that the petitioner will get in touch with P.O. for inspection of documents. However, efforts were made in this regard, but the petitioner delayed the Enquiry proceedings on one pretext or the other. However, it was directed by the Enquiry Officer that the inspection of the documents by the petitioner should be completed by the end of Feb.90 for which the order dated 17.1.90 itself speaks. But in order to further delay the Enquiry proceedings the petitioner has not contacted with the Presenting Officer, and made no effort to ~~get~~ inspect the documents and filed



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this petition before this Hon'ble Court on 19.2.90. That is prior to the end of Feb.90. The petitioner has also not submitted any list of additional documents for which he was pressing during the inquiry proceedings. This act shows that petitioner was not at all co-operative to conclude the inquiry proceedings at the earliest. On the contrary, he was trying to delay the enquiry proceedings on one pretext or the other.

18. That the contents of Sub-paras(xxvi) & (xxvii) of para 4 of the claim application relate to the department under Respondent No.1 and as such they need no reply from the answering Respondent.

19. That the grounds as taken in para/5 of the application are emphatically denied and it is submitted that these grounds are factually incorrect and they are not sustainable under the relevant law and the constitution of India. There is no violation of articles 14 and 16 and any other provision of the Constitution.



20. That with regard to the contents of para 6 of the claim application it is submitted that the applicant has retired from service on 8.2.89(AN), but the disciplinary proceedings are still pending against him and it was still open to him to avail of departmental remedies for the redressal of his grievances before approaching this Hon'ble Tribunal.

21. That the contents of para 7 of the application being the matter of record, need no reply.

22. That with regard to contents of para 8 of claim application, it is submitted that during the pendency

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of disciplinary proceedings against the applicant, he is not entitled to any relief prayed for in the present claim application. The disciplinary proceedings have to be resumed and to be concluded in accordance with law.

23. That with reference to the contents of para 9 of the claim application it is submitted that in view of the correct position stated above in this counter-affidavit the applicant, the charged officer is not entitled to any interim order by way of interim relief and as such, the interim orders dated 22.2.90 and dated 6.3.1990 and subsequent interim orders are liable to be vacated and consequently the disciplinary proceedings deserve to be resumed and concluded in accordance with law.

24. That the contents of Paras 10 to 12 of the claim application need no reply.

25. That the deponent has been advised to state that in view of the factual and legal position stated in this counter-affidavit, the applicant is not entitled to any reliefs sought in this claim application, which is devoid of any merit and is liable to be dismissed with costs.

Lucknow

Haushild
DEPONENT

Dated 17-5-1990.

Haushild



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VERIFICATION

I, the above named deponent do hereby verify that the contents of paras 1 and 2 of this affidavit are true to my knowledge, the contents of para 3 to 24 are true to my knowledge derived from the official records and the contents of paras 25 to 26 are believed by me to be true on the basis of legal advice. No part of this affidavit is false and noting material has been concealed. So help me God.

Lucknow

Haushild
DEPONENT

Dated May 17, 1990

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

S. D. S. Prasad
ADVOCATE



✓ Solemnly affirmed before me on 17 Sept 1990 AM/PM by Shri Naresh Prasad Tiwari, the deponent who is identified by S. D. S. Prasad Advocate, High Court, Lucknow.

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

S. D. S. Prasad
S. D. S. PRASAD
OATH COMMISSIONER
High Court Lucknow Bench Lucknow
No. 1975/90
Date 17/9/90

Annexure 'C-1'

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No. C.14011/6/85-V & EMR(1)
Government of India
Ministry of Health & Family Welfare

New Delhi, Dated 12.2.85

OFFICE MEMORANDUM

The President proposes to hold an inquiry against Dr.G.S.Gill, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (ANNEXURE I). A Statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (ANNEXURE II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (ANNEXURE III & IV)

2. Dr.G.S.Gill is directed to submit within 10 days of the receipt of this Memorandum, a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will held only in respect of those articles of charge as are not admitted. He should, therefore specifically admit or deny each article of charge.

4. Dr.G.S.Gill is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS (CCA) Rules, 1965 or the orders/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex-parte.

5. Attention of Dr.G.S.Gill is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Dr.G.S.Gill is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.

6. The receipt of this Memorandum should be acknowledged.
By order and in the name of the President.

rded to Mr. C.S. Lucknow

To

Dr. G. S. Gill,
Chief Medical Officer, G.E.S. Dispensary, Tilak Nagar, New Delhi.

(S.P.Goswami)
Deputy Secretary to the Govt. of India



GD.

John. G. ...

C.S. / South

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ANNEXURE I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST DR.G.S.GILL, FORMERLY DEPUTY ASSISTANT DIRECTOR, CGHS, KANPUR AND PRESENTLY WORKING AS CHIEF MEDICAL OFFICER, CGHS, DELHI

ARTICLE I : That the said Dr.G.S.Gill, A GBC Grade I officer of Central Health Service while functioning as Deputy Assistant Director, Central Govt. Health Scheme, Kanpur exhibited serious lack of integrity and acted in a manner unbecoming of a Govt.servant in as much as he entered into a conspiracy with Shri V.S.Mishra and Shri V.S.Gupta, both officials of the CGHS, Kanpur, for misappropriation of money in the purchase of medicines on the basis of false prescriptions and forged indents by abusing their official position as Govt. Servants. In pursuance of the objectives of the said conspiracy, Dr.G.S.Gill committed these acts of omission and commission in collusion with above said other two officials and acquired pecuniary gain for himself and consequently put the Govt. to a pecuniary loss to the tune of Rs.139-35 only. Dr.G.S.Gill has thus violated the provisions of Rule 3.1.(i) and (iii) of CCS (Conduct) Rules, 1964

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST DR.G.S.GILL, EX-DAD, CGHS, KANPUR AND PRESENTLY CHIEF MEDICAL OFFICER, CGHS, DELHI.

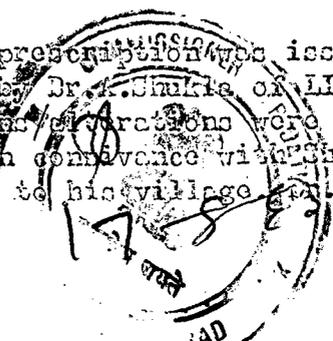
ARTICLE-I

That Dr.G.S.Gill was functioning as Deputy Assistant Director, CGHS, Kanpur during the period 1970-75. In addition, Dr.Gill also functioned as Officer in charge and Controller of CGHS Dispensaries established at R.K.Param, Juhi and Civil Lines at Kanpur. Normally the medicines were supplied to the patients from the Dispensary. However, in the event of non-availability of medicines prescribed by the Specialists of LIR and other Associated Hospital located in Kanpur, the same were purchased from the open market by preparing an indent which was to be approved by DAD for supply to concerned patients.

On 23.3.84, one Shri B.K.Misra (Token No.9362) was admitted in GSVM Medical College and Associated Hospital, Kanpur. A forged prescription was made by Shri V.S.Misra, Pharmacist, CGHS, Kanpur in the name of Shri B.K.Misra in which the requirement of six pieces each of Gypona bandage and plain bandage (6" size) were shown as prescribed by Dr.A.K.Gupta. These items were valued at Rs.68.35. This forged prescription was approved by Dr.G.S.Gill and accordingly an authority slip was prepared by Shri V.S.Misra and these items were procured by him.

A similar forged prescription dated 30.3.74 in the name of same patient Shri B.K.Misra was again prepared by Shri V.S.Misra, purported to have been prescribed by Dr.S.C.Gaur. This was again approved by Dr.G.S.Gill for purchase of medicines i.e. Glucose and Bicozyme Injection costing Rs.73.50/-. The indent was prepared by Shri V.S.Misra and the medicines were received by him.

A prescription was issued in the name of Shri Vijay Shankar Gupta, Pharmacist by Dr. A. Shukla of LIR Hospital, Kanpur. In this prescription certain additions/modifications were made to insert four more medicines by Shri V.S. Gupta in connivance with Shri Gopal Prasad, a Pharmacist of LIR Hospital, who belongs to his village. Dr.G.S.Gill approved for local purchase of these medicines.



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ANNEXURE III

List of documents on the basis of which article of charge framed against Dr. C.S. Gill, C.M.D. are proposed to be sustained.

1. FIR of RC No. 25/76-Lucknow dt. 22.6.76
- ✓ 2. Prescription dated 2.9.74 in respect of Sh. D. K. Mishra.
3. Authority slip dt. 3.9.74 issued by DAD, CGHS Kanpur to Bombay Medical Stores.
- ✓ 4. Authority slip dt. 31.8.74 issued by DAD, CGHS Kanpur for patient D.K. Mishra.
- ✓ 5. Prescription dated 31.8.74 for patient Sh. D.K. Mishra.
- ✓ 6. Authority slip dated 19.5.75 issued by D.A.D. CGHS Kanpur to Medical Stores, Kanpur.
- ✓ 7. Authority Slip dated 22.5.75 issued by DAD CGHS Kanpur to Bombay Medical Stores.
8. Prescription in respect of Shri. V.S. Gupta dated 25.11.74
- ✓ 9. prescription dt. 28.8.74 in respect of token No.5574 (G.D. Verma).
- ✓ 10. Prescription dated 26.8.75 for patient Sh. V.S. Mishra.
11. Local purchase Issue Register of CGHS Dispensary R.K. Nagar for period 19.11.74 to 25.4.74 containing entries dt. 4.12.74 in respect of Shri. V.S. Gupta.
- ✓ 12. (A-1 to A-5) Leave Applications of Shri. V.S. Mishra. Pharmacist dt. 28.2.74, 19.3.74, 27.3.74, 4.5.74 and 19.6.74.
13. Leave applications A-6 to A-10) of Vijai Shankar Gupta Pharmacist dated 1.8.74, 19.10.74, 6.3.74, 23.2.74 and 19.3.75.
- ✓ 14. Leave applications of Shri G.D. Verma, Pharmacist (A-11 to A-15) dt. 12.1.72, 24.1.73, 8.2.73, 17.2.73 and 7.6.73.
- ✓ 15. Specimen writings of Shri Vimal Swarup Mishra S-1 to S-21.
16. Specimen writings of Shri Vijaya Shankar Gupta S-22 to S-27.
- ✓ 17. Speciman writings of Shri G.D. Verma S-28 to S-34.
18. " " Gukulnd S-35 to S-38.
- ✓ 19. " " S.N. Mishra S-39 to S-40.
- ✓ 20. " " R.K. Kakkar S-41 to S-44.
- ✓ 21. Gojion of CGHS Calcutta No.DXC-254/76 dt.30.11.76.
- ✓ 22. Seizure Memo dt.1.6.76 for obtaining documents from Sh. Ram Badan, UDC-cum-Cashier, Q/o D.A.D. CGHS Pandu Nagar, Kanpur.

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17-8-76
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ANNEXURE IV

The list of witnesses by which the article of charge framed against Dr. C.S. Gill, CMO, CGHS, Delhi are proposed to be sustained.

1. Dr. A.K. Rastogi, Orthopaedics, Post Graduate Hostel, Room No.12, Medical College, Kanpur.
2. Dr. A.K. Gupta, (Retd) r/o 117/W/3 Pandu Nagar Kanpur.
3. Dr. S.N. Sinha, G.S.V.M. Medical College, Kanpur. r/o 7/194 Swaroop Nagar, Kanpur.
4. Dr. A. Shukla, r/o Kusum Kunj, Banglow, No.14/60 Civil Lines Kanpur.
5. Shri Syed Abbas Hussain s/o Syed Azuz Hussain r/o 88/412 Humam Bagh, Chaman Ganj, Kanpur, working as clerk in the Head Post Office, Kanpur.
6. Shri K.K. Nigam s/o Shri Ganesh Pd. Nigam r/o Or.No.A-11 P & T Colony, Kanpur-4 (cantt), working as Head Clerk in the Office of Sr. Supdt. of Post Offices, Kanpur.
7. Shri Keshay Prasad Tripathi s/o Sri J.R. Tripathi r/o village Rudrapur, P.O. Khojni, Distt. Gorakhpur working as LDC in the office of Chief Medical Officer, CGHS, Pandunagar, Kanpur.
8. Shri Ram Badan s/o Shri Pattar Bhar r/o village Kandhrapur P.O. Kamal Sagar, Distt. Azamgarh working as UDC-cum-Cashier in the office of the Chief Medical Officer, CGHS Pandunagar, Kanpur.
9. Shri Hari Lal, LDC working in the office of CMO, CGHS Kanpur.
10. Dr. S. Banerjee, Medical Officer Incharge, CGHS Dispensary, R.K. Nagar, Kanpur.
11. Shri Ram Sajeewan, Pharmacist, CGHS Dispensary R.K. Nagar, Kanpur.
12. Shri Surya Nath Mishra, Chaukidar, Regional Labour Institute, Govt. of India, Sarvodya Nagar, Kanpur, r/o Village Lauki Misir, P.S. Bakhira Eazar, P.D. Kusru Khurd Distt. Basti.
13. Shri Dinesh Kumar Mishra, Peon in the office of CMO, CGHS, Kanpur.
14. Shri W.U. Misbahi s/o Hafiz Enayat Ullah, r/o 99/87 Becon Ganj, Kanpur working as Pharmacist in CGHS Dispensary Civil Lines, Kanpur.
15. Sh. Diwakar Prasad Misra s/o Sumana Prasad Misra r/o Village Kulha PS Bighapur, Unnao working as sorter in RMS (Administrative Officer) Kanpur.

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Annexure 'C' 2

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New Delhi
19.6.57

Present:- 1. Shri G.S. Gill - C.O.
2. Shri Nagesha Prasad - P.O.

Preliminary hearing is held today. The charges are denied by the charged officer.

It has been brought to my notice by the charged officer that he has appealed to the President of India for permitting him to engage a legal practitioner for defending him in the departmental inquiry. He has also requested the inquiry officer to keep the proceedings in abeyance till his appeal to the President is disposed of. Meanwhile it has been stated by the Presenting Officer that the prosecution documents are with the court and that he is able to procure only 10 documents out of a total of 13 documents. Keeping all these factors in view I am not saying down any *chittakata* today. After the Co's appeal to the President of India is disposed of and a decision in respect thereof is communicated to me the proceedings will be taken up once more.

Meanwhile the PO is directed to procure all the prosecution documents and keep them ready for inspection.

G.S. Gill
C.O.

Nagesha Prasad
P.O.

[Signature]
Inquiry Officer
19.6.57

[Signature]



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,
LUCKNOW.

O.A. No.59 of 1990.

F.F. 4.12.1990
21.1.1991



Dr.G.S.Gill.

...Applicant

Versus

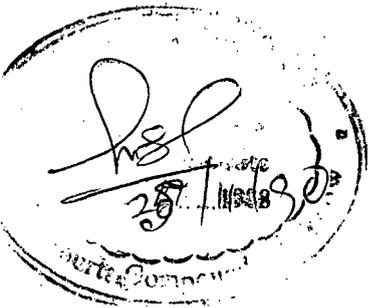
Union of India and others.

...Respondents.

REJOINDER AFFIDAVIT TO THE COUNTER AFFIDAVIT OF
RESPONDENT NO.1

*Filed today
syd
4/12/90*

I, Dr.G.S.Gill, aged about 59
years son of Sri Natha Singh,
resident of 4-A/33, Tilak Nagar,
New Delhi and last employed as
Chief Medical Officer, Central
Government Health Scheme,
Dispensary No.26, Tilak Nagar,
New Delhi, the deponent do hereby
solemnly affirm and state on
oath as under:-



1. That the deponent is the applicant in
the above described O.A. and as such he is fully
conversent with the facts and circumstances of
the case.

Dr. G. S. Gill

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2. That the deponent has read and understood the contents of the counter affidavit filed on behalf of Respondent No.1.

3. That the contents of para 1 of the counter affidavit need no reply.

4. That the contents of para 2 of the counter affidavit (appearing on page 1) are unnecessary. These facts are already enumerated in the application. It is stated that the CBI did not find evidence against the applicant worth even filing of charge sheet before the special judge Anti Corruption(Central)U.P.Lucknow and therefore is wholly wrong, baseless, malicious to level allegations against the applicant regarding acts of omission and commission causing pecuniary loss to the Government to the tune of Rs.189.39P as alleged.



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5. That the contents of para 2 of the counter affidavit(appearing on page 2) have been stated only to high light that the applicant is responsible for the delay which is unfounded and prima facie incorrect.

6. That the contents of para 3 of the

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counter affidavit are not disputed.

7. That the contents of para 4 of the counter affidavit are not admitted as stated. No reasons have been assigned for changing the Inquiry Officer and the Presenting Officer which has further delayed and vitiated the proceedings.

8. That the contents of Para 5 of the counter affidavit are denied as wrong and misconceived. The disciplinary proceedings are vitiated due to inordinate delay and the impugned charge sheet dated 18.8.86 is liable to be quashed and during the pendency of the present application the ad-interim order dated 22.2.1990 passed by this Hon'ble Tribunal is liable to be confirmed.

9. That the contents of para 3 of the counter affidavit need no reply.

10. That the contents of para 4 of the counter affidavit are not admitted as stated. It is added that the applicant being the Head of Office cannot be expected by any stretch of imagination to be acquainted with every one's handwriting and the indents for local purchase



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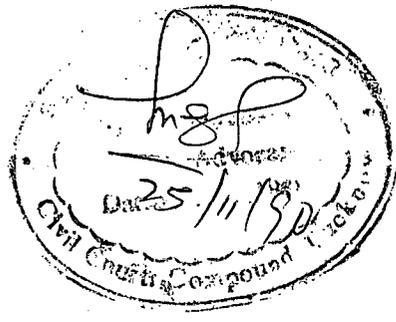
were signed by him in good faith.

11. That the contents of para 5 of the counter affidavit need no reply.

12. That the contents of para 6 of the counter affidavit are not admitted as stated.

The applicant was promoted to the post of C.M.O. w.e.f. 19.8.1983 on which date the alleged misconduct observations made by the Special Judge, Anti-Corruption (Central) U.P. Lucknow and Hon'ble High Court of Judicature at Allahabad, Lucknow Bench Lucknow were within the knowledge of disciplinary authority and therefore there was no occasion for issue of charge sheet on 18.8.86. Moreover the Respondent has not stated the reasons for the inordinate delay in initiating the disciplinary proceedings and issue of charge sheet.

13. That the contents of para 7 of the counter affidavit are denied as baseless. The inordinate delay has vitiated the disciplinary proceedings, and as such the disciplinary proceedings cannot be allowed to continue.



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14. That the contents of para 8 of the counter affidavit need no reply.

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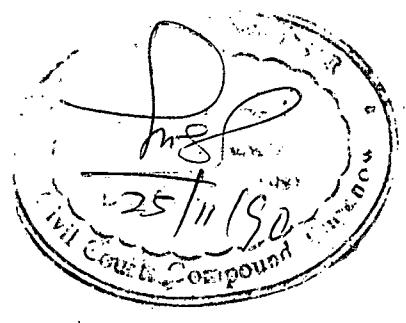
15. That the contents of para 9 of the counter affidavit are denied as wrong and misconceived and those of para 4(xiii) of the application are reiterated as true. The disciplinary proceedings are vitiated due to inordinate delay. The matter being very old, it is not possible for the applicant to admit or deny the charges in the absence of the documents, as demanded.

16. . . . That the contents of para 10 of the counter affidavit need no reply.

17. That the contents of para 11 of the counter affidavit are denied as wrong and those of para 4(xvii) of the application are reiterated as true. It is specifically denied that there were no good and sufficient circumstances for the disciplinary Authority to exercise his discretion in favour of the applicant, as alleged.

18. That the contents of para 12 of the counter affidavit need no reply.

19. That the contents of para 13 of the counter affidavit are denied being vague. The answering respondent has not stated as to what were the administrative reasons which compelled them to change the Inquiry Authority. Moreover,



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no counter affidavit has been filed by the Respondent No.2, which could have stated the alleged administrative reasons.

20. That the contents of para 14 of the counter affidavit need no reply. However, it may be added that the applicant has retired w.e.f.28.2.1989, and more than one and half year has already elapsed, but the amounts due to the applicant are not yet released. It is not understood as to how long the matter will remain under consideration. The applicant is facing financial hardship.

21. That the contents of para 15 of the counter affidavit are denied and those of para 4(xxi)of the application are reiterated as true. It is specifically denied that the delay in the enquiry is caused due to insistence of the applicant to engage a a legal practioner. The respondent issued the charge sheet to the applicant on 18.8.86 for the alleged misconduct committed during 1972-75, i.e. after more than 11 years, which remains to be explained. The respondent has not explained the delay but are trying to shift the burden/responsibility without any basis.



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22. That the contents of para 16 of the counter affidavit need no other reply, except reiteration of the contents of para 4(xxii) of the application and the averments made in the preceding paragraphs.

23. That the contents of para 17 of the counter affidavit ipso facto reveals that the Inquiring Authority and the Disciplinary Authority are not interested in early finalisation of the proceedings and expect that the applicant should remind them at each and every stage.

24. That the contents of para 18 of the counter affidavit need no reply.

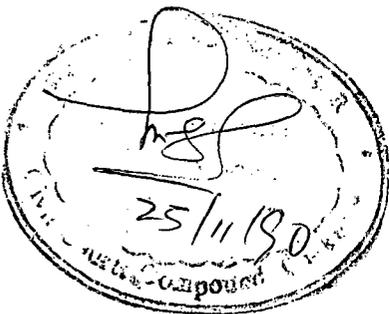
25. That the contents of para 19 of the counter affidavit are denied as wrong and baseless. The charge sheet was issued to the applicant on 18.8.86 for an alleged misconduct committed in 1972-75, which is inordinate delay by any stretch of imagination. It is specifically denied that the inquiry proceedings are not proceeding because of any fault of the applicant. As evident from para 4(xxiv) of the application, even no intimation has been communicated to the applicant regarding inspection of listed documents. It may also be

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A776

stated here that the applicant is residing at New Delhi and his frequent visits to Lucknow for contacting the Presenting Officer and inspecting the documents causes unnecessary financial burden on the applicant. The charge sheet dated 18.8.86 and the disciplinary proceedings are vitiated due to inordinate delay and therefore the ad-interim order dated 22.2.1990 passed by this Hon'ble Tribunal is liable to be confirmed.

26. That in reply to the contents of para 20 of the counter affidavit, it is stated that there is no reason/justification for withholding the encashment of leave and D.C.R.G. and the applicant is being harassed unnecessarily. It is specifically denied that the applicant is not co-operating in the enquiry, but it is added that there was ^{no} justification for issue of charge sheet after more than 11 years, more so when the judgment was pronounced by the learned Special Judge, Anti Corruption (Central) U.P. Lucknow on 8.3.1978 in case No.49 of 1977 (State Vs Vijai Shankar Gupta and another), convicting one of the two accused and on 25.7.78 in Case No.50 of 1977 (State Vs. Vimal Swarup Mishra) and the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow had also delivered the judgments



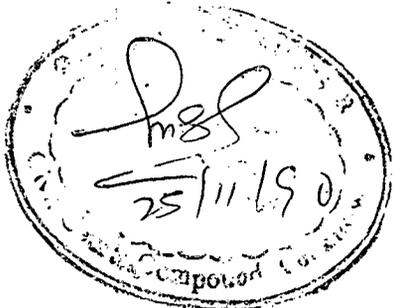
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- 9 -

in Criminal Appeal No.206 of 1978 (Vijai Shanker Gupta Vs.State) on 26.7.79 and in criminal Appeal No.598 of 1978 (Vimal Swarup Misra Vs.State) on 4.9.1980. It is not explained as to what is the reason for the delay of 6 years in issuing the charge sheet even after the judgments by the Hon'ble High Court. Here it may also be stated that the applicant was promoted as C.M.O. on 19.8.1983, i.e., during the intervening period of verdicts of Hon'ble High Court and the issue of charge sheet on 18.8.86, and as such the alleged misconduct would be deemed to have been condoned by the Government.

27. That the contents of para 21 of the counter affidavit are denied as wrong and misconceived and the contents of para 4(xxvii) of the application are reiterated as true. The ad-interim order dated 22.2.1990 passed by this Hon'ble Tribunal is liable to be confirmed.

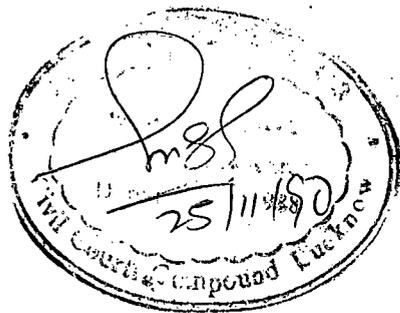


28. That the contents of para 22 of the counter affidavit are denied as wrong and misconceived and the ground raised in para 5 of the application are reiterated as true. It is specifically stated that the applicant was the Head of Office and he cannot be expected to deliver the medicines to the patients and verify

CS

the signatures. The applicant had acted in good faith. It may also be stated that when the individuals against whom the C.B.I. is alleged to have found concrete evidence were acquitted, it is not understood as to how prima-facie case against the applicant is now found. It is reiterated that the applicant is not responsible for the delay in the inquiry proceedings and it is the answering respondent, who is solely responsible for the inordinate delay in the issuing of charge sheet. In any view of the matter, the alleged misconduct is of a very minor nature and initiation of disciplinary proceedings after such an inordinate delay is nothing, but an abuse of the process.

29. That the contents of para 23 of the counter affidavit are denied. As the applicant has been issued the charge sheet on behalf of the President of India and his application for engagement of a legal practitioner for defence has been rejected by the President of India, no other departmental remedy is available to him. Moreover, the applicant has already retired w.e.f.28.2.1989 (A.N.) and as such the present application is the only alternative to seek redressal of his grievances.



Adm

30. That the contents of para 24 of the

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of the counter affidavit are denied as wrong and misconceived. In view of the averments made in the application and the rejoinder affidavit, the reliefs prayed for in para 8 of the application are admissible and the application is liable to be allowed with costs. The ad-interim order dated 22.2.1990 passed by this Hon'ble Tribunal is liable to be confirmed and application for its vacation moved by the Respondent No.1 is liable to be rejected.

Usha

Lucknow:

Deponent.

Dated: November 25th, 1990.

VERIFICATION

I, Dr. G.S. Gill, s/o Sri Natha Singh, aged about 59 years, last employed as Chief Medical Officer, Central Govt. Health Scheme, Dispensary No.26, Tilak Nagar, New Delhi, resident of 4-A/33, Tilak Nagar, New Delhi, do hereby verify that the contents of paras 1 to 7, 9, 10, 12, 14, 16, 20 to 26, 28 (partly) and 29 are true to my personal knowledge and contents of these of paras 8, 13, 15, 27, 28 (partly), 30 and 31

are believed by me to be true on the basis of legal advice and that I have not suppressed any material fact.

Usha

Lucknow:

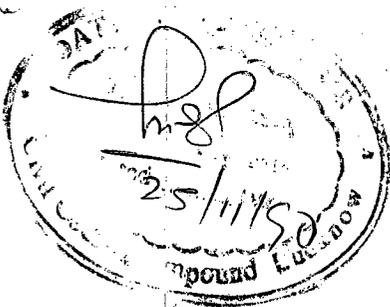
Deponent

Dated: November 25th, 1990.

IDENTIFICATION

I identify the deponent who has signed before me.

P. C. Singh Adv.
Advocate.



74.17

11:00 AM
 Dr. G.S. Gill
 (Sworn at residence)
 P. C. Singh
 Advocate

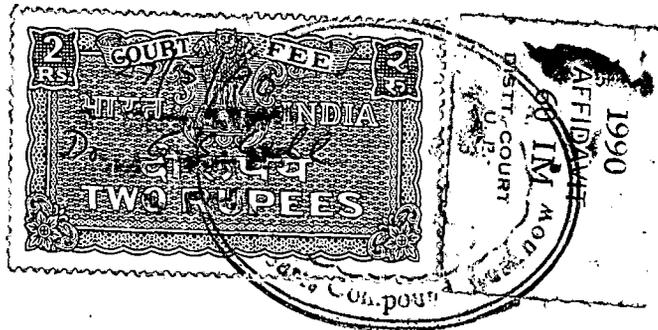
M. S. Sengupta
 25/11/90
 Oath Commissioner

explained by me...

A79

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.

O.A. No.59 of 1990.



Dr.G.S.Gill.

...Applicant

Versus

Union of India and others.

...Respondents.

REJOINDER AFFIDAVIT

PT
27/5/90

I, Dr.G.S.Gill, aged about 59 years son of Sri Natha Singh, resident of 4-A/33, Tilak Nagar, New Delhi and last employed as Chief Medical Officer, Central Government Health Scheme, Dispensary, No.26, Tilak Nagar, New Delhi, the deponent do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the applicant in the above described O.A. and as such he is fully acquainted with the facts and circumstances of the case.
2. That the deponent has read and understood the contents of the counter affidavit



W. S. Gill

ADP

filed on behalf of respondent No.3 and its rejoinder is being filed hereunder.

3. That the contents of Paras 1 and 2 of the counter affidavit need no reply.

4. That the contents of para 3(i) of the counter affidavit are not disputed. It may be added here that the accusation against the deponent was baseless and ill founded as is evident from the fact that no charge sheet was filed against the deponent by the respondent No.3 as is evident from the averments made in para (ii) of the counter affidavit.

5. That the contents of para 3(ii) and 3(iii) of the counter affidavit need no reply.

6. That the contents of para 3(iv) of the counter affidavit are not disputed. However it is stated that the alleged observation of the learned special judge nowhere mentions the name of the deponent involved in the alleged racket.



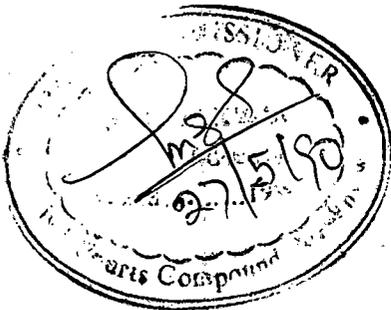
7. That the contents of para 3(v) of the counter affidavit need no reply.

8. That the contents of Para 3(vi) of the counter affidavit are not admitted as

W. J. J.

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stated. Sri V.S.Gupta was acquitted of the charges by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow vide judgment and order dated 26.7.1979 passed in Criminal Appeal No.206 of 1978 and Sri V.S. Mishra was also acquitted by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow vide judgment dated 4.9.1980 passed in Criminal Appeal No.598 of 1978. As evident from Annexure A-2 to the O.A.the impugned charge sheet has been ~~missed~~ issued against the deponent on 18.8.1981 i.e.after 6 years of the last judgment pronounced by Hon'ble High Court of Judicature at Allahabad, Lucknow Bench for which no explanation has been offered. The inordinate delay in issuing the charge sheet has vitiated the proceedings. As regards permission to engage a legal practitioner for defence of the deponent, it is specifically stated that the request/representation was rejected by the disciplinary authority wrongly and without considering the verdict of the Hon'ble Supreme Court in the case of G.L. Subramaniam Vs.the Collector of Customs(1973) 2 SCJ 488 which was duly mentioned by the deponent in his representation.



9. That the contents of para 3(vii) of the counter affidavit are not disputed. However, the fact remains that the deponent was promoted

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to the next higher grade of Chief Medical Officer(hereinafter referred to as the C.M.O.) on 19.8.1983. It may be pertinent to mention that the departmental authorities had full knowledge of the alleged F.I.R. and the observations made by the learned Special Judge and the Hon'ble High Court on the date of promotion of the deponent which ipsofacto washes away the effect if any of the alleged F.I.R. and observations of the Hon'ble Courts.

10. That the contents of Paras 4 and 5 of the counter affidavit need no reply.

11- That in reply to the contents of para 6 of the counter affidavit it is added that mere lodging of F.I.R. against a person cannot make him an accused. The innocence of the deponent is established from the fact that the C.B.I. had found nothing against the deponent during the investigation and therefore no charge sheet was filed against the deponent.

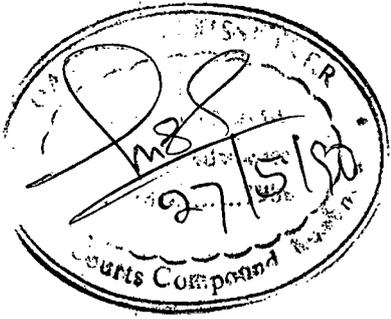
12. That the contents of Para 7 of the counter affidavit are not disputed. The alleged observations were made by the learned Special Judge(Central)Anti Corruption, U.P.Lucknow and the Hon'ble High Court ~~was made~~ in the cases in which the deponent was not a party. The name of deponent has not been mentioned by the Hon'ble Courts in their observations.



W. S. S.

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13. That the contents of para 8 of the counter affidavit are denied and those of para 4(ix) of the O.A. are reiterated as correct. The judgment was pronounced by the Hon'ble High Court on 4.9.1980 in Criminal Appeal No.598 of 1978 and it is not understood as to what prevented the departmental authorities from proceeding against the deponent departmentally for 6 years. It may also be stated that the deponent was promoted to the post of C.M.O. during this period. The observations made by the trial court as well as Hon'ble High Court were not challenged as the deponent was neither a party to case nor any observations were made against him specifically. The fact remains that there is an inordinate delay in issuing the charge sheet against the deponent.



14. That the contents of para 9 of the counter-affidavit need no reply and contents of para 4(x) of the O.A. may kindly be perused.

15. That the contents of para 10 of the C.A. need no reply as the answering respondent has not replied the contents of para 4 sub-para

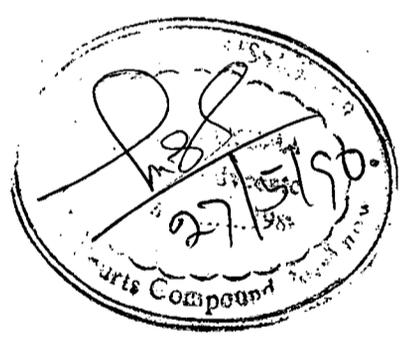
W. S. S.

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XI to XIV of the O.A. and has expected the respondent No.1 to reply.

16. That the contents of Paras 11,12 and 13 of the counter affidavit need no reply.

17. That the contents of para 14 of the counter affidavit are denied and those of Para 4 (XXI) of the O.A. are reiterated. It is stated as a fact that the inquiring authority and the presenting officer were not changed at the request of the deponent and the respondent No.1 had changed them suomotu which has further delayed the proceedings. It is specifically denied that the deponent had in any way contributed towards the delay in the disciplinary proceedings. The deponent had legal right to be represented by legal practioner for defending him in the inquiry and in the fairness of the circumstances he had requested to keep the proceedings in abeyance.



18. That the contents of Para 15 of the counter affidavit are denied as wrong and misconceived and those of Para 4(XXII) of the O.A. are reiterated as true. It is not clear

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as to how answering respondent has replied the contents of Para 4(XII) of the O.A. and on the basis of which record the answering respondent has verified the contents of para 15 of the counter affidavit. It is specifically stated that the disciplinary authority has not applied his mind to the request of the deponent to engage a legal practitioner to defend the deponent in the inquiry and rejected the request illegally, arbitrarily and in violation of Article 14 of the Constitution.

19. That the contents of Para 16 of the counter affidavit are not disputed but the fact remains that the presenting officer had failed to give advance intimation of his inability to attend the proceedings to the inquiring authority which could have saved the charged officers (including the deponent) from the harassment. The fact has been clearly brought out by the inquiring authority in the record of proceedings dated 17.1.90(annexed as Annexure No.A-12 to the O.A.).

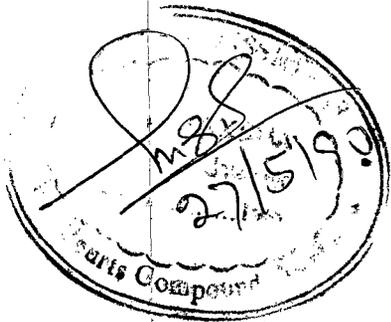
20. That the contents of para 17 of the counter affidavit are denied as wrong and those



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of Para 4 (XXV) of the O.A. are reiterated as correct. It is specifically stated that there is an inordinate delay on the part of the Department firstly in issuing the charge sheet and secondly by changing the inquiring authority and the presenting officer at their sweet will. It is specifically denied that the deponent has been adopting dilatory tactics. The deponent has requested for supply of the copies of the statement of witnesses vide his letter dated 29.8.86 (Annexure No. A-3 to the O.A.) which speaks of his promptness. It is incorrect to say that the deponent has not asked for documents prior to 17.1.90. Further it is also incorrect to say that the deponent has not made any effort to contact the Presenting Officer for inspection of the documents. In fact the deponent who is residing at Delhi had requested the Presenting Officer at Lucknow vide his letter dated 18.1.90 for allowing the inspection of the documents. Photostat copy of the letter dated 18.1.90 is being annexed as Annexure No. S-1 to this affidavit. However, no reply whatsoever has been received from the Presenting Officer. It is denied that the



W. S. S.

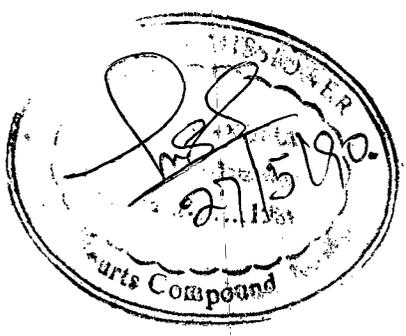
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deponent is not cooperating in the inquiry. The fact remains that despite full cooperation by the deponent the Department could not finalise the proceedings during 15 years of the alleged incident.

21. That the contents of Para 18 of the counter affidavit need no reply.

22. That the contents of para 19 of the counter affidavit are denied as wrong and misconceived and those of Para 5 of the O.A. are reiterated as true. It is specifically stated that inordinate delay in issuing the charge sheet itself has vitiated the whole proceedings besides they are also violative of Articles 14 and 16 of the Constitution.

23. That the contents of Para 20 of the counter affidavit are denied and those of Para 6 of the O.A. are reiterated as true. It may be pertinent to mention here that the disciplinary authority in the case of the deponent is the President of India, therefore the question of departmental remedies does not arise.



W. S. K.

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24. That the contents of Para 21 of the counter affidavit need no reply.

25. That the contents of para 22 of the counter affidavit are denied as wrong and misconceived and those of Para 8 of the O.A. are reiterated as true. It is pertinent to mention that no counter affidavit has been filed on behalf of respondent No.1 (Disciplinary Authority) and respondent No.3 has no concern whatsoever with the resumption of disciplinary proceedings.



26. That the contents of Para 23 of the counter affidavit are denied as wrong and misconceived and those of Para 9 of the O.A. are reiterated as true. This Hon'ble Tribunal has granted the interim order dated 22.2.90 after perusing the records made available by the deponent which have not been controverted by the answering respondent. The interim order dated 22.2.90 which has been extended from time to time is liable to be confirmed more so in view of the fact that no counter affidavit has been filed on behalf of respondent No.1 so far.

W. Khan

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27. That the contents of Para 24 of the counter affidavit need no reply.

28. That the contents of Para 25 of the counter affidavit are denied as wrong and misconceived. The O.A. of the deponent is liable to be allowed on merits with cost.



Lucknow:

Dated: May 27, 1990.

U. S. Gill

Deponent.

VERIFICATION

I, Dr. G.S. Gill, s/o Sri Natha Singh, aged about 59 years, last employed as Chief Medical Officer, Central Govt. Health Scheme, Dispensary No. 26, Tilak Nagar, New Delhi, resident of 4-A/33, Tilak Nagar, New Delhi, do hereby verify that the contents of paras 1 to 17, 18 (partly), 19 to 21, 22 (partly) and 23 to 28 are true to my personal knowledge and contents of those of paras 18 (partly) and 22 (partly) are believed by me to be true on the basis of legal advice and that I have not suppressed any material fact.

60114

Lucknow:

Dated: May 27, 1990.

U. S. Gill

Deponent.

IDENTIFICATION

I identify the deponent who has

signed before me.

M. S. Grewal
27/5/90

O.A. No. 11/88
Civil Courts Compound, Lucknow

R. C. Singh
Advocate.

11:00 AM
Dr. G. S. Gill
R. C. Singh
Advocate

In the Central Administrative Tribunal
Circuit Bench, Lucknow
O. A. No. 59 of 1990

ADP

Dr. G. S. Gill
Vs.
Union of India and others

--- Applicant

--- Respondants

ANNEXURE NO. S-1

U.P.C.

FROM

DR. G. S. GILL, C.M.O. (Retd.)
4A/33, Block Nagar, New Delhi.

TO

Shri S. KAMAL ALI, Presenting officer
Sub. Inspector,
Central Bureau of Investigation,
7, Narsul Kishore Road,
Lucknow.

Sir,

The brief hearing in the case was held ^{on 27/5/90} under Shri M. Neelakantan, C.D.I., Central Vigilance Commission a copy of which has been sent to you also.

As desired by the C.D.I., you may kindly inform the convenient date on which you can hand over the photocopies of listed documents as well as have the documents examined by me & my defence assistant while fixing the date kindly give sufficient notice keeping in view the difficulty in getting train-reservations for journey.

Thanking You

Yours faithfully

W. S. Gill

(Dr. G. S. Gill)

New Delhi

Dated 18-1-90

W. S. Gill



Before The Central Administrative Tribunal, Allahabad-1
 Cal. Reg. No. of 1990
 Rajendra Kumar Srivastava versus Union Of India & Others

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2	A-1	31-12-57	Assignment order No. M.R.S. Srivastava/DP	11	12
3	A-2	13-9-58	Appellate Order No. P-1/3/05-05 from Dr. Supt. Posts Faizabad	13	

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6	A-5	24-9-58	Review Petition to EPS Incknow	25	27
7	A-6	No date	Complaint to SPOs		28
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Filed on 1-1-1990

O.A. Reg. No. of 1990

Signature Of Registrar

In The Central Administrative Tribunal, Allahabad-1

Between

Rajendra Kumar Srivastava Applicant

A N D

(1) Sub Postmaster Ayodhya, Faizabad

(2) Sr. Supt. Posts Faizabad

(3) DPS Incknow

(4) Union of India through Secretary
 Ministry Of Communications, New Delhi-1 Respondents

(R.K. Tewari)
 Advocate

154, Purohita Nagar, Allahabad-25

*Added a
 for cuts mtr
 4/1/80*

270372/80

4(1) The applicant was an Extra Departmental Stamp Vendor at Ayodhya P.O. in Faizabad Postal Division. He entered the Extra Department on 19.2.1978. He was an active worker of Extra Departmental Employees Union. There was a demonstration of E.D. Employees on 8.11.83 before Shri S.P. Ojha, the then D.P.S. Lucknow when he visited Faizabad to show their resentment against wrong revision of E.D.A's allowances. The applicant was the leader of that demonstration and he, therefore, became a sore of eye to the learned Sr. Superintendent, Posts, Faizabad (Resp.No.2) and shortly afterwards the applicant was put off duty on 14.12.83 in a fabricated case.

4(ii) After being kept under put off duty the applicant was served with a Memo of charges by the learned Sub Postmaster Ayodhya (Resp.No.1) vide his No.A/Rajendra Kumar Srivastava/DP dated 31.12.87. The Memo of charges have been reproduced verbatim in the Punishment order as well as ⁱⁿ the Enquiry Report. The applicant denied the charges and hence an Enquiry under rule 8 of E.D.A. (C&S) Rules was held and the Inquiry Officer (I/O in brief hereafter) submitted his report on 3.12.1987 vide copy of Annexure A-3 on pages 14 to 17. The I/O. held the charges proved and the learned Respondent No.1 awarded the applicant the punishment of removal from Service vide his Memo No.A/Rajendra Kumar Srivastava /DP dated 31.12.1987 at Annexure A-1 on Pages 11 and 12.

4(iii) The applicant preferred an appeal to the Sr. Supdt. Posts, Faizabad (Respondent No.2) on 15.6.88. Notwithstanding the fact that a condonation of delay in the submission of appeal was sought for on medical grounds the learned Respondent No.2 did not condone delay and rejected the appeal as time-barred vide appellate order at Annexure A-2 on page 13

R. Kumar

21030/88

4(iv) The applicant then preferred a review Petition before the learned D.P.S. Lucknow (Respondent No.3) on 24.9.88 vide copy at Annexure A-5 on pages 26 to 27. This review petition was submitted to D.P.S. Lucknow in accordance with rule 117 of P & T Manual Vol.II. As the same remained unattended this application is submitted before the Hon'ble Tribunal.

4(v) The facts of the case are that one Smt.Kaushalya Devi resident of Bari Chhaoni Ayodhya had opened a 5 year Time Deposit Account No.15537 on 3.7.80 with an initial Deposit of Rs.4,000/-. She was well known to the applicant as the latter had been residing close to Bari Chhaoni Ayodhya. The lady was illiterate and therefore her thumb impression on the Index Card and the Pay-in-slip was scribed by the applicant. ~~The Specimen Signature by the applicant.~~ The specimen signature Register also bears the Thumb Impression of Smt.Kaushalya duly scribed by the ^{applicant} fact. Shri Ganpati Lal the then S.P.M.Ayodhya appearing as a D.W. has confirmed these facts before the Inquiry Officer.

4(vi) That the said Smt.Kaushalya Devi R/o Bari Chhaoni Ayodhya Submitted an application on ^{Nov. 83} 2.1.1984 to Resp.No.1 for issuing her a duplicate Pass Book of her T.D.A/c No.15537 as the original one was stated to have fallen some-where. Even on this application the thumb Impression of Smt.Kaushalya Devi R/o Bari Chhaoni Ayodhya was scribed by the applicant. The application was forwarded by Resp.No.1 to Postmaster Faizabad. who after holding necessary enquiries ordered for the issue of a duplicate Pass Book. The said Smt.Kaushalya Devi authorised one Shri Ram Kumar L.S.G. Postal Assistant working in Faizabad Head post office to receive on her behalf her duplicate Pass Book from Postmaster Faizabad. Shri Ram Kumar accordingly receipted the duplicate Pass Book

R. Tewari

27030

on 31.1.1984 on behalf of Smt.Kaushalya Devi.

4(vii) On receipt of the duplicate Pass Book from Shri Ram Kumar, the said Smt.Kaushalya Devi applied on 6.2.84 to SPM Ayodhya for the prematured closure of her 5 year T.D.A/c No.15537. On this application too the T.I. of Smt.Kaushalya Devi, resident of Bari Chhaoni, Ayodhya was scribed by the applicant and it was on the identification of the applicant that the lady was paid Rs. 5013/- on 6.2.84.

4(viii) Here one thing is very important worth Notice viz., the date of incidence for which the applicant was awarded the Punishment of Removal from service is 6.2.84. This is the date mentioned in the Punishment order, Enquiry Report and all relevant records. This means there had been absolutely nothing against the applicant which warranted his being Put off duty from 14.12.1983. It clearly shows that he was put off duty on 14.12.83 because he participated in the demonstration before the D.P.S. Lucknow (on visit to Faizabad on 8.11.1983) and subsequently he was implicated in a fabricated case.

4(ix) Soon afterwards one lady named Kaushlya Devi accompanied by Shri Surya Narain Dass resident of Bhajan Ashram Naya Ghat, Saryu Tat Ayodhya is said to have approached the Senior Superintendent, Posts, Faizabad (Respondent No.2) and to have handed him over an undated complaint regarding forged withdrawal of Rs.4,000/- from her T.D. Account No.15537 standing at Ayodhya P.O. A copy of the said complaint is appended as Annexure A-6 on page 28 Thereon the preliminary enquiry was entrusted to Shri Hanahla Prasad S.D.I.(Posts), Faizabad East who recorded the statement of the said lady on 12.10.1984 and that statement was written by Shri Surya Narain Dass of Bhajan Ashram, Naya Ghat, Surya Tat Ayodhya. Its copy is appended as Annexure A-7 on page 29

R. Tewari

200302/1984

4(x) Smt. Kaushalya Devi resident of Naya Ghat, Saryu Tat was not produced before the Inquiry Officer. Her death certificate, not bearing the date of death, not granted by the Gram Pradhan or the Secretary of Vill. Bangarnau Unmao was submitted. It was submitted by the Presenting Officer himself under his own attestation before the I/O who accepted it despite protests from the applicant. Surya Narain Dass was

produced before the I/O to testify the ^{Stt.} of Smt. Kaushalya Devi dated 12.10.1984 which he is said to have written before the Preliminary Enquiring Officer Shri Haushla Prasad Sharma. SDI(P) Faizabad. The learned I/O has placed full reliance on parts of the Stt. of Shri Surya Narain Dass which suited ^{him} to declare the charge against the applicant proved and did not touch the ^{parts} posts which rendered the whole statement as unreliable. This action of the learned Inquiring Officer had been totally against the law of Evidence and hence the findings of the Inquiring Officer are not maintainable.

A 4(xi) There is no denial of the fact that Smt. Kaushalya Devi R/o Bhajan Ashram, Naya Ghat was an illiterate lady. She was unable to sign and she always put her Thumb Impression. Naturally therefore while opening her T.D. Account No. 15537 at Ayodhya P.O. she must have got her Thumb Impression attested by some one known to the Post office (as per Postal rules). The learned Preliminary Enquiring Officer (hereafter called P.E.O.) did not enquire from her as to who attested her Thumb Impression at the time she of opening Account. The P.E.O. further failed to ascertain as to who attested her Thumb Impression on the application for issuing a duplicate Pass Book, when the lady had flatly refused that she did not know any Rajendra Kumar (applicant) it was a must on the part of P.E.O. to have confronted the applicant and the lady and should have then asked who identified her Thumb Impression at the time of opening the T.D. Account.

Rw Jones

21/10/84

4(xiii) Shri Suraj Narain Dass was not a listed witness but was examined as a prosecution witness by the Inquiring Officer against G.I.O. No.2b below Rule 14 of C.C.S.(C.C.A.)Rules

Shri Dass in his statement has deposed certain facts which belie the whole prosecution story. According to Shri Dass, Smt.Kaushalya Devi joined Bhajan Ashram at Naysghat in May/June, 1980 and brought with her Rs.4500/- She donated Rs.500/- to Ashram and desired to get invested the remaining 4000/-Rs. in some Bank. Shri Dass got it invested in Bank of Baroda in Current Account in the Joint name of himself (Shri Surya Narain Dass) and Smt.Kaushalya Devi. Later on it is deposed that Smt.Kaushalya Devi (a lady too illiterate to sign) withdrew the entire amount without the knowledge of Shri Dass and invested the same at Ayodhya P.O. on 3.7.1980 in T.D.Account No. 15537 This too was done without the knowledge of Shri Dass. All this is highly impossible a simple enquiry from M/s Bank of Baroda, Ayodhya Branch would reveal the fact that no current account in the Joint Name of Smt.Kaushalya Devi and Shri Suraj Narain Dass was at all opened nor was it closed 15-20 days after its being opened.

4(xiv) From the Enquiry Report, it is fully established that the Inquiry Officer has given a report on 'His Masters' Voice.

(a) He sent a letter to Smt.Kaushalya Devi, at her Unnao address but failed to send a letter to her at her Bari Chhaoni, Ayodhya address.

(b) He himself compared the T.Is of Smt,Kaushalya devi obtaining on the complaint presented to S.S.Posts (Resp.No.2) and her statement dated 12.10.1984 before P.E.U. on one hand and that obtaining on the withdrawl form on the other hand and has declared that as the two did not tally the T.I. on the withdrawl form was of a forged letter.

210302/1981

Had the learned Inquiry Officer compared the T.I. of Smt. Kaushalya Devi obtaining on her application for opening the T.D. Account with those obtaining on her complaint and her statement dated 12.10.1984 before the P.E.U. he would have noticed the difference that a fake and forged lady had preferred the complaint.

4(xv) Had the learned I/O. compared the T.Is of Smt. Kaushalya Devi obtaining on her application for opening the T.D. Account and that for her closing that Account he would have noticed the similarity and he would have felt fully convinced with the innocence of the applicant B ut he could not do that under the pressure of his Master (Respondent No.2) who had a pre-plan of dismissing the applicant because he demonstrated against him (Resp.No.2) before the D.P.S. Lucknow on 8.11.1983.

4(xvi) See last page

5. Grounds for Relief sought for -

- (a) The Punishment order is bad in law because it has been passed with a malafide intention. The applicant was put off duty on 4.12.1983 when the admitted date of incidence resulting to his removal from service is 6.2.1984.
- (b) Because a complaint of non-receipt of amount was got made from a forged and fake lady who was neither produced before the Inquiry Officer nor was her proper Death Report submitted.
- (c) Because the P.E.O. wilfully suppressed inquiry on most material part of the case.
- (d) Because the learned Inquiry Officer acted basically against the Law of Evidence by accepting

Rw Juv

21/30/84

Only certain
of portion of the statement of witness which
suited his convenience and rejecting the other
which did not suit him.

(r) Because the learned Respondent No.2 rejected the
appeal as time barred without considering the
application for condonation given on Medical ground.

6. Remedies exhausted.

The applicant preferred an appeal on 15.6.88 to
Respondent No.2 who rejected it on 13.8.88 vide appellate order
at Annexure A-2 on page 13 He further submitted a review
petition to D.P.S. who on 24.09.1988 which has remained un-
attended hence this application is being submitted.

7 -Matters not previously filed or pending with any 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.

R. J. J.

21/3/88

7- Reliefs Sought For :-

The applicant prays for the grant of following reliefs :-

- (i) That the Punishment Order No.A/Rajendra Kumar Srivastava/DP dated 31-12-87 issued by SPM Ayodhya and the appellate order No.P-1/3/85-86 issued by the Sr. Supdt. Posts Faizabad may both be set aside and the applicant may be put back to his old post with retrospective effect.
- (ii) That he may be granted the cost of this suit.
8. There is no prayer for any interim relief.

11 If application is sent by Regd. Post, does the applicant desire to have oral hearing at the Admission stage if so he must attach a self addressed P. C.

No

12--Particulars of the Postal Order in respect of the application :

- (i) No. of I. P. O. DD3/630342
- (ii) Name of Issuing P. O. Purshottamagar P.O.
- (iii) Date of Issue 21-11-89
- (iv) P. O. at which payable— Allahabad Head Post Office

13—List of enclosures :

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

In verification

I, R.K. Srivastava s/Shri Trivendra Kumar Srivas. aged 45 years R/O Vill. Barahata PO Ayodhya and working as ED Stamp- do hereby verify that the contents from Paras 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Place—Allahabad

Date 1-1-90 19

To

The Registrar, Central Administrative Tribunal, Allahabad - 211001

Signature of applicant

(R. K. Tewari)

Advocate

154, Purushottam Nagar,
Allahabad—16

कार्यालय डाक विभाग

कार्यालय - उप डाकपाल (सल० संस० जी०)
अयोध्या, फैजाबाद 224123

शापन सं० स/राजेन्द्र कुमार श्रीवास्तव/डीपी०
अयोध्या 224123 दिनांक 31-2-1987

श्री राजेन्द्र कुमार श्रीवास्तव अतिरिक्त विभागीय टिकट बिक्रेता
अयोध्या, फैजाबाद (कार्य प्रथम) को इस कार्यालय के शापन
संख्या सम दिनांक 22-9-87 द्वारा अतिरिक्त विभागीय सजेक्ट
(आचरण एवं सेवा) नियमावली 1964 के नियम 8 के अन्तर्गत
एक आरोप पत्र देकर जाँच प्रस्तावित की गयी थी। उक्त शापन
के साथ दुराचार एवं कदाचार का सार भी संलग्न करके उक्त
श्री राजेन्द्र कुमार श्रीवास्तव को दिया गया था जो मूल रूप में निम्नवत है:-

1. यह कि उक्त श्री राजेन्द्र कुमार श्रीवास्तव ने अतिरिक्त
विभागीय टिकट बिक्रेता उप डाकपाल अयोध्या के दिनांक
6-2-84 को कार्य करते हुए 5 वर्षीय सावधि खाता संख्या
15537 में मू० 5013-10 (पाँच हजार तेरह हजार दस पैसे) की
निकासी के सम्बन्ध में फार्जी व्यक्ति की मवाही की।
अस्तु आरोपित है कि उक्त श्री राजेन्द्र कुमार श्रीवास्तव ने
अतिरिक्त विभागीय सजेक्ट (आचरण एवं सेवा) नियमावली
1964 में वर्णित नियम 17 का उल्लंघन किया। "

2. उक्त मामले में विस्तृत जाँच हेतु इस कार्यालय के
शापन संख्या सम दिनांक 22-9-87 द्वारा श्री शिवराम कुंठ
डिप्टी पोस्ट मास्टर फैजाबाद को जाँच अधिकारी एवं
श्री बी० सुन० आर० सिंह कार्यालय सहायक माडलीय
कार्यालय फैजाबाद को प्रस्तावित अधिकारी नियुक्त किया
गया था। वंचाव सहायक के रूप में श्री राम निहार लाल
सेवा निवृत्त पोस्ट मास्टर गौरवपुर (राजपति) को
कार्य किया।

3. जाँच अधिकारी ने अपना जाँच कार्य दिनांक
15-10-87 को प्रारम्भ किया। उक्त विधि को जाँच
अधिकारी के समक्ष दोषारोपित कर्मचारी उपस्थित हुआ
और अपने ऊपर लगाये गये आरोपों को अस्वीकार
किया। जाँच अधिकारी ने अपना जाँच कार्य दिनांक

कामना: पृष्ठ 2 पर

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अ-12-87 का समाप्त करके अपने पत्रांक ई०ओ-3/87 दिनांक 3-12-87 द्वारा जांच आख्या प्रेषित कर दिया।

4. मैंने जांच अधिकारी की जांच आख्या, प्रस्तोता अधिकारी को लिखित, बचाव पक्ष द्वारा प्रस्तुत लिखित सार एवं सम्बन्धित अभिलेखों का अध्ययन किया। जांच आख्या के अनुसार श्री राजेन्द्र कुमार श्रीवास्तव आरोपित कर्मचारी को अपर लगाये गये आरोप सिद्ध पाये गये हैं। मैं जांच अधिकारी की आख्या से पूर्णतः सहमत हूँ। आरोपित कर्मचारी ने दिनांक 6-2-84 को अयोध्या डाकघर स्थित 5 तवीय सावधि जमाखाना सं० 15537 से किसी फर्जी महिला को वास्तविक जमाकर्ता के रूप में प्रस्तुत करके तथा उसकी गवाही करके सं० 5013-10 पी० का भुगतान करा दिया। ऐसा करके उक्त आरोपित कर्मचारी ने अतिरिक्त विभागीय एजेंट (आयुष्म एवं सेवा) नियमावली 1964 के नियम 17 के अनुकूल कार्य नहीं किया। ऐसी दशा में उक्त आरोपित कर्मचारी को विभाग की सेवा में बनाये रखने का कोई औचित्य नहीं है।

आदेश

मैं, जगत चारी मिश्र उपडाकपाल (एल०एस०जी०) अयोध्या, प्रोजेक्ट उक्त श्री राजेन्द्र कुमार श्रीवास्तव अतिरिक्त विभागीय डाक रिक्त विक्रेता अयोध्या, प्रोजेक्ट (कार्यपुथक) को सेवा से निष्कासन (रिजुवम फ्राम सविसे) का आदेश देता हूँ, जो तत्काल से प्रभावी होगा।

जगत चारी मिश्र (जगत चारी मिश्र) उपडाक पाल (एल०एस०जी०) अयोध्या फैजाबाद

श्रीतेजिनि निम्नलिखित को सूचनाय एवं आवश्यक कार्यवाही हेतु प्रेषित :-

- 1. श्री राजेन्द्र कुमार श्रीवास्तव अतिरिक्त डाक रिक्त विक्रेता अयोध्या, प्रोजेक्ट (कार्यपुथक) जांच रिपोर्ट की एक प्रतिलिपि।
- 2. सीनियर पोस्ट मास्टर प्रोजेक्ट 224001।
- 3-5. उपर अद्यक्षक डाकघर प्रोजेक्ट 80037, प्रोजेक्ट के सतर्का तथा 'अमला' अनुकार हेतु।
- 6-7. कार्यालय तथा अतिरिक्त प्रतिलिपि।

R K TEWARI
Nagar
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Annexure A-2

Py Jagjit Singh
KN. 855 dated 11/10/18/13 SERO

भारतीय डाक विभाग

कार्यालय प्रवर अधीक्षक डाकघर, फजाबाद मण्डल, फजाबाद 224001
आचम संख्या एफ-1/3/05-06 दिनांक फजाबाद 31.0.1900/13.4.00
.....

श्री राजेन्द्र कुमार श्रीवास्तव, भूतपूर्व अतिरिक्त विभागीय
टेलीग्राम केन्द्र, अयोध्या फजाबाद ने सब पीएच ए मास्टर अयोध्या फजाबाद
के नाम पर सीमा 12/1/07 दिनांक श्रीवास्तव दिनांक 31.12.07 द्वारा
पारित टण्डादेश " सेवा से निष्कासन " के विरुद्ध अपील दिनांक
12.6.08 भेजी है, जो इस कार्यालय में दिनांक 20.6.08 को प्राप्त हुई
है। अपीलार्थी ने तबत आपन प्राप्त होने की तिथि 12.1.08 बताई है।
इस प्रकार यह अपील निर्धारित समय सीमा के बाहर भेजी गई है।

अपीलार्थी ने अपनी अपील के पैरा 21 में लिखा है कि उपरोक्त
टण्डादेश मिलने के बाद से वह गम्भीर रोग से बीमार चल रहा है और बराबर
वर्ष डाक्टरों के इलाज में रहा है। सभी डाक्टरों के प्रेसक्रिप्शन की फोटो
प्रतिलिपियाँ भी अपील के साथ संलग्न एन -1 से एन - 7 तक भेजा जाना
बताया है किन्तु किसी भी प्रेसक्रिप्शन की फोटो प्रति वास्तव में संलग्न नहीं
की गई है। निम्न का कारण विश्वसनीय नहीं लगता। अतः अपील निर्धारित
सीमा अर्थात् के बाद प्राप्त होने के कारण इस पर विचार किये जाने का कोई
औचित्य नहीं है। इस लिए अपीलकर्ता की अपील अस्वीकार की जाती है।

: कमलेश चन्द्र सिन्हा :

प्रवर अधीक्षक डाकघर
फजाबाद मण्डल, फजाबाद।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु :-

1. श्री राजेन्द्र कुमार श्रीवास्तव, भूतपूर्व अतिरिक्त विभागीय
टेलीग्राम केन्द्र अयोध्या, फजाबाद।
2. उप डाकपाल अयोध्या फजाबाद।
3. स्थापना अनुभाग मण्डलीय कार्यालय, फजाबाद।
4. कार्यालय प्रति।
5. अतिरिक्त प्रति।

R K Tewari
R K TEWARI

vocate
154, ... in Nagar
...
...-16

21/03/18

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Annexure A-4

To,

The Senior Supdt. Post Offices
Faizabad Division,
Faizabad.

Subject;- Appeal against the order of the Sub Postmaster
Ajodhya imposing penalty of removal from
service vide Memo. No. A/Rajendra Kumar Srivastava
-ava dated 31.12.87 delivered on 12.1.88
(copy enclosed as annexure A).

Sir,

The above named appellee ^{is} Rajendra
Kumar Srivastava bears to submit as under;-

Facts of the case in brief are that the
appellant was appointed as E.D. Stamp Vendor Ajodhya
by the then Inspector of Post Offices Faizabad East
with effect from 19.2.78. The appellant was performing
his duties to the best satisfaction of public and
there has been no public complaint against the appellant.

2. That the appellant was active worker of the
E.D. Union and in connection with illerality committed
by the then Senior Supdt. Post Offices Faizabad in
revision of allowances of E.D.A's there was demons-
-tration of E.D. employees before Shri S.P. Ojha the then
D.P.S. Lucknow on 8.11.83 at Faizabad and the appellant
had also participated.

3. That thereafter the appellant and other
eight or nine active worker of the Union were ordered
to be put off duty. The appellant was put off duty
vide memo. No. A/Ajodhya dated 14.12.83 by the then
S.P.M Shri Ganpat Lal illerally without jurisdiction
because he is inferior in rank than the appointing
authority viz. Inspector of Post offices.

25/3/88

49. That one Smt. Kaushilya Devi r/o Bari Chawni (4)

Ajodhya had opened 5 year T.D. A/C No. 15537 on

3.7.80 with initial deposit of Rs. 4000/- She was well

^{Kaushilya}
known to the appellant as appellant was living near Bari Chawni Ajodhya. She was illiterate and therefore her thumb impression on index card and payin slip was scribed by the appellant on specimen slip pasted in specimen signature book the ~~the~~ thumb impression of said Smt. Kaushilya Devi was also scribed by the appellant. This fact has been admitted by Shri Ganpati Lal (D/W).

50. That the said Smt. Kaushilya Devi r/o Bari Chawni applied for issue of duplicate Pass book in the Nov 84 ^{because her} ~~around that the~~ pass book was lost. Reasons shown in her application was "fallen some where". The copy of said application dated 2.1.84 is attached as annexure (B).

60. That on the said application the Thumb impression of Smt. Kaushilya Devi r/o Bari Chawni Ajodhya was scribed by the appellant as she was well known to the appellant. The S. P. M. Ajodhya Shri Ganpati Lal forwarded application for issue of duplicate pass book to Postmaster Faizabad after making necessary enquiry and verifying contents from ledger of said A/C maintained at Ajodhya.

70. That said Smt. Kaushilya Devi applied for premature closure of T.D. A/C No. 15537 on 6.2.84 on receipt of duplicate P.B. through Shri Ram Kuber and she approached the appellant for identification and scribing her thumb impression. She was paid Rs. 5013/- on 6.2.84 and on the receipt portion the appellant scribed the thumb impression. Copy of S.B. 7 is attached as annexure (C).

80. That on withdrawal from ann. l. d.

4. That the said so called Smt. Kaushilya Devi applicant and complainant neither disclosed in her application (annexure D) nor her statement dated 12.10.84 that she was ever residing at Bari Chawni Ajodhya. In her statement she deposed th at she was not knowing the appellant when record viz. Index Card ,specimen signature shows that at the time of opening a/c in 1980 she was identified by appellant and ~~annexure~~ she was knowing the appellant. The statement dated 12.10.84 was illegally brought on record of enquiry and is attached as annexure(F). This statement was brought on record inspite of objection raised by appellant (copy attached as annexure (G)).

10. That during the enquiry Shri Surya Narain Dass Kastalia Baba who was produced before the enquiry officer as new evidence though illegally brought out new story which makes the witness unworthy of reliance. He deposed that said complainant came to Kastalia Baba Anram in May or June 80 and gave him Rs.4500/- . He got opened the account of Rs.4000 /- in Baroda Bank in joint name After that she withdrew the amount from Baroda Bank without his knowledge and this information was received by him when he made enquiries at Baroda Bank. She again returned to said Anram after some time and said Shri Surya Narain enquired from her when she had deposited the amount as Bank Hatt (Babu) had told that money was withdrawn . She told that she had deposited the money at Ajodhya Post Office . He also deposed that she told that her pass book was lost and he directed her to go to Ajodhya post office and apply for duplicate pass book. It may be noted that at the time of opening of new A/C she had given her address Bari Chawni . At the time of applying for duplicate P.B she had given her address Bari Chawni. Such evidence was fabricated and concocted by the Department (copy of statement is attached as annexure (J)).

210307/1/80

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14.. That the presenting officer himself went to Unao for the reasons best known to him and he produced death certificate of Smt. Kaushilya Devi to prove that Smt. Kaushilya Devi had died and as such she could not be produced (copy death certificate attested by presenting officer and obtained by him is attached as annexure (K)).

17.. That neither Pradhan of the village nor the Secretary Gram Panchayat of said village was produced nor any authenticated death certificate was produced before the enquiry officer except annexure (K) which is inadmissible in evidence.

18.. That the death certificate produced by the presenting officer does not contain the date of death of so-called Smt. Kaushilya Devi and request was made for calling the Gram Pradhan and Secretary and death register vide application dated 19.12.87 but not allowed by the enquiry officer (copy enclosed as annexure (L)).

19.. That the appellant submitted his defence statement which is elaborate and deals with all facts containing irregularities and illogicalities committed by enquiry officer (copy attached as annexure (M)).

20.. That the enquiry officer submitted report to S.P.M. Ajodhya and did not apply his mind to the case, evidence of prosecution and defence and illogicalities of enquiry officer and imposed the penalty of removal from service without passing speaking order illegally and without jurisdiction knowing it fully well that the appointing authority of appellant was S.D.I. who was superior in rank than the S.P.M. Ajodhya.

21.. That when the order of removal was delivered the appellant was seriously ill and was under treatment in clinic of Doctors. The photostat copies of prescription of Doctor Vijai Bahadur D.P. Singh, K.N. Bunde, S.D. Singh S.R.N. Hospital Allahabad, Dr. N.K. Mehrotra M.L.N. Medical College are attached as annexure N-1 to N7. The appellant is still confined to bed. Any how the appellant is submitting appeal which may kindly be considered though submitted after 3 months due to above reasons. The appellant is still ill.

210302/1/1/1/1/1

The appeal is submitted on the following grounds:

Grounds of appeal

1. Because the order of put off duty, charge sheet appointment of enquiry officer enquiry conducted by Shri S.R. Gupta and his enquiry report and punishment order imposed is illegal and without jurisdiction.

2. Because the entire case is based on conjectures and surmises without any evidence and the proceeding was initiated mala fide.

3. Because the enquiry officer has conducted the enquiry in utter disregard of principles of natural justice and in violation of rule 14 of the C.C.S. (C.C.A) Rules 1965 and Govt. orders.

4. Because the finding of enquiry officer and disciplinary authority is based on no evidence rather on conjectures, surmises and inadmissible evidence and concocted and fabricated story.

The important issue to be decided is that lady who submitted application to Shri M.L. Kureal S.S. Post Faizabad in 1984 (No date written) and whose statement was recorded by Shri Haushila Prasad and written by Shri Surej Narain was was the depositor of the T.D. A/C No. 15537 and is there any evidence to prove that said lady complainant named as Kaushilya Devi was real depositor. Shri Haushila Prasad Sharma has admitted that he did not make any enquiry at Bari Chawni from Mahant of Bari Chawni to establish that said lady named as Kaushilya Devi was in fact Kaushilya Devi residing earlier at Bari Chawni. Shri Haushila Prasad Sharma P.W. has admitted that no confrontive enquiry was made. The said lady was not produced in Post Office

contd. on page 13.....

21/10/80 [Signature]

- 23 -

for identification either by appellant or by subpostmaster Shri Ganga ti Lal who had forwarded the application for duplicate pass book. The said lady was also not produced before this enquiry though she was named as witness. At the last moment the presenting officer took plea that said lady who was assumed to be depositor is dead and in its support a death certificate containing no date of death and not authenticated but attested ^{by} presenting officer was produced. Will it prove that the said lady complainant assumed as depositor was dead. The department should have produced extract of death register certified by revenue authorities in case Gaon Pradhan and Secretary along with death register were not produced. Thus the lady who assumed herself to be depositor was never produced before appellant and in this enquiry the main witness was not produced on false pretext and that she was dead without establishing her death.

Instead the presenting officer produced one Shri Suraj Narain Das Karla as Baba was produced. His statement itself demolishes the whole case and his statement itself prove the fact that the said lady was neither Smt. Kaushilya Devi nor depositor of this T.O.A/C 15537. The appellant has shown reasons in support of above assumption. The said lady has stated in his statement dated 12.10.84 that she was not knowing appellant. The index card and specimen ~~xxxxxxxx~~ slip will show that the thumb impression was scribbled by appellant when account was opened in July 80 and in January 1984 when application for duplicate pass book was given by her as admitted. Had the said lady been Smt.

contd. on page 14.....

21030 Suban Pr...

24..

Smt. Kaushilya Devi the depositor she would have not deposited so. Shri Surej Narain Dasa Kartalia Baba did not deposit before 23.12.87 that the said lady named Kaushilya Devi had come to his Ashram in May and June 1984 with Rs 4500/- and joint account was opened in Baroda Bank first and thereafter the said lady withdrew Rs.4000/- and deposited it at Ajodhya and when P.O. was lost he directed her to go to Ajodhya P.O. and give application for duplicate P.O. If his version is believed it will amount that when a/c was opened she was residing at Nayerhat but index card ledger and ledger card will show that she had given her address as Bari Chhouni Ajodhya. This proves that the said lady was not the depositor, her name might have been Smt. Kaushilya Devi. Even in her statement dated 12.10.84 it was not disclosed that she had shifted from Bari Chhouni. Thus there is no valid evidence to prove that said lady complainant was depositor.

The enquiry officer mentioned in his finding that the impression of thumb on complaint and statement dated 12.10.84 differs with thumb impression on S.B.7 and on this own testimony he proved that money was fraudulently withdrawn by appellant. He went on to say that on page 21 of defence appellant has admitted that pass book was given to me by Shri Ram Kuber. The reading of statement will show that appellant had narrated the facts of the case levelled against me and not that appellant admitted to have received the duplicate P.O. This reflects the bias and prejudicial approach of enquiry officer. If the Enquiry Officer could compare the thumb impression he should have compared the thumb impression on S.B.7 with specimen card and Index Card before taking the said lady to be depositor. Her thumb impression on complaint and statement should have been compared with thumb impression

2037 [Signature]

25.

an specimen card and Index Card before saying that said lady was Smt. Kaushilya Devi depositor. This was unimpeachable evidence which the dept. should have produced but has not been done. Thus there is no evidence that said lady was depositor of the T.D.A/C Trust the enquiry officer and Disciplinary authority grossly misappreciated the evidence tendered before the enquiry officer and failed to apply their mind in judicial manner. At the risk of repetition the appellant submits that there was unimpeachable evidence with the prosecution viz, S.B.7 Index Card and specimen Card. Before admitting the said lady was lodged complaint as depositor the department should have obtained the opinion of Thumb Impression Expert by sending the specimen of the said lady and Index Card, specimen card and S.B.7. The opinion of Handwriting expert would have not only thrown light whether said lady was in fact depositor but also brought into light the conspiracy of Shri Suraj Narain Dutt and Postal Assistant employee who wrote the application presented to S.S. Post to get and the department. Thus the finding is based on no evidence and liable to be quashed.

Prayer

The appellant, therefore prays that impugned order of removal be kindly set aside.

[Handwritten Signature]
[Handwritten Signature]

R K TEWARI
 Advocate

154, Indraprastha Nagar
 (Kirti Road)
 Allahabad-16

Yours faithfully,

15-6-58

[Handwritten Signature]

[Handwritten Signature]

Annexure A-5

To,

The Director Postal Services,

LUCKNOW - 1

Review Application against the appellate order
Passed by the Learned Sr. Supt. Posts Faizabad
rejecting the Reviewist's appeal on limitation
Ground.

Sir,

The reviewist most respectfully begs
to submit a true copy his appeal submitted to the
learned Senior Superintendent Of Post Offices
Faizabad along with all its enclosures and
medical certificates and the Prescriptions for
your kind perusal.

The appeal has been rejected as
time-barred and the request for the condonation of its
delay has been rejected. The learned appellate
authority has disacknowledged the receipt 7 pres-
criptions enclosed as Annexures II N-1 to N-7.

~~They were again submitted after the~~

210 B. Inayatullah

They were again submitted after the receipt of the appellate order but the learned appellate authority refused to make any change in the appellate order.

This review petition is, therefore, submitted with a prayer

P R A Y E R

(1) That the delay ought to be condoned very kindly be condoned and either the appellate authority may be directed to decide the appeal as merit

OR

(2) In the interest of justice and to avoid unnecessary it may very kindly be decided by your honour for which Act of kindness the petitioner shall ever remain grateful to you.

Your's faithfully,

Dated : 24-02-03

(R.K. Tewari)

sent under Panchsheel Butchery P.O. No. 475 dated 24-9-03

R.K. Tewari
R.K. Tewari
R. K. TEWARI
Advocate

154, Jaganmohan Nagar
(K. ...)
Allahabad-16

24/3/03 *R.K. Tewari*

Annexure A-7

Statement of Smt. Kaushilya Devi No Nayaghat Bajan Ashram Ayodhya

मैं कौशीला देवी नया घाट भजन आश्रम सरयू तट अयोध्या बयान करती हूँ कि मैंने 3-7-80 को 4000/- रुपये से एक 5 वर्ष बर्षती है टी डी खाता अयोध्या डाक घर में खोला था इस खाते का नम्बर 15537 है। खाता खोलवाने में छुद डाक घर गई थी। इस खाते को पास बुक मुझ से अयोध्या रेलवे स्टेशन पर गायब हो गई। निशानित ता 0 पास बुक होने की मुझे नहीं मालूम है। पास बुक गायब होने की मैंने कोई रिपोर्ट पुलिस में नहीं किया था। पास बुक गायब होने की रिपोर्ट दूसरे दिन ही किया था। अयोध्या डाक घर में।

डाक खाने में मुझसे यह कहा गया की आप की पास बुक दूसरी बन जायेगी। दूसरी पास बुक बनवाने के लिये मैंने प्रार्थना पत्र अयोध्या डाक घर में दिया था। परन्तु मुझे पास बुक बन कर नहीं मिली। जब की कई बार मैं अयोध्या डाक घर गई हर बार मुझसे वही कहा गया कि पास बुक दो पाद दिन में मिल जायेगी। परन्तु अभी तक पास बुक नहीं मिली अपने पास बुक के लिये जब मैंने बड़े डाक खाने पैनाबाद से जाँच किया तो पता चला की सारा पैसा खाते से निकल चुका है।

तब मैंने इसकी भिकायत उच्च अधिकारियों को किया मैंने काफी भी समय से पहले भुगतान के लिये कोई प्रार्थना पत्र नहीं दिया है। और न तो हमारे खाते का पैसा ही हम को मिला खया निक्ले का प्रार्थना पत्र जो मुझे आज दिनांक 12-10-84 को दिखाया जा रहा है। उस पर मैंने कभी भी सीगुठों का निशान नहीं लगाया है। जो अंगुठों का निशान फार्म के दोनों तरफ लगा हुआ है। वह हमारा नहीं है। मैं राजेन्द्र कुमार श्रीवास्तवा को नहीं जानती पहचानती हूँ। मुझे ख 5013-10 का भुगतान नहीं मिला है। मेरे खाते से यह भुगतान करणी किया गया है। कृपया मुझे खया दिखाया जाये।

अती कृपा होगी। 4

लेखक

सुधनिरायन दास नम घाट
सरयू तट भजन आश्रम
अयोध्या

12-10-84

निशानी

अंगुठा

कौशीला देवी

Recorded in
my presence
Sa. H. Pa. Sharma
DDCN FD(E.A.)
17-10-84

[Handwritten signature]

[Handwritten signature]

R. K. TEWARI

Advocate

35A, Purani Chauraha, Allahabad

(Khandwa)

Allahabad - 16

O/o
 221091

B90

Ayodhya

dated 19.2.78.

Shri Rajendra Kumar Srivastava Esq. Shri
Jeeendra Kumar Srivastava Mahadatta Barhata
Po Ayodhya Ps Kotweli Ayodhya Dist Faizabad is
hereby appointed provisionally as Esq.
Stampreader Ayodhya against the vacant post
with immediate effect.

Shri Rajendra Kumar Srivastava should
clearly understand that his appointment
as Esq. Stamp Reader Ayodhya is purely temporary
and can be terminated at any time
without assigning any reason and without
notice. His appointment as Esq. stamp reader
will be under no claim contract liable to be
terminated by him or his undersigned by
notifying each other in writing and
his service will be governed by the
E.O.A. (Contract & Gen) Rule 196, as amended
from time to time.

He will have to provide substitutes in
his own responsibility. When he is present
in cases after stamp prior approval
after under sign.

He will also furnish all bills by the

True photo
copy

Rudra
B. R. TEWARI
133 Pura ... Nagar
(Kbuldabad)
Allahabad-20

Stamp
221091

Shri Rajendra Kumar Srivastava Esq. Shri
Jeeendra Kumar Srivastava Mahadatta Barhata
Po Ayodhya Dist Faizabad is
hereby appointed provisionally as Esq.
Stampreader Ayodhya against the vacant post
with immediate effect.

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... before ...
orders
Dale
12/2
12/2

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

-000-

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IN

COUNTER AFFIDAVIT

IN

REGISTRATION O.A.No.59/1990.

Rajendra Kumar Srivastava ... Petitioner

Vs.

Union of India & others ... Respondents.

Sl.No.	Description	Page No.
1.	Application	1 - 2
2.	Counter affidavit	3 - 14
3.	<u>Annexure No. I</u> A photocopy of the complaint.	15-00
4.	<u>Annexure No. II</u> A photocopy of the statement.	16-17

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

DT: 12-2-1990.

Allahabad.

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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

-000-

Civil Misc. Application No. 293 /1990

ON BEHALF OF

Union of India & others ... Applicants/
Respondents.

IN

REGISTRATION O.A. NO. 59/90.

Rajendra Kumar srivastava ... Petitioner

Vs.

Union of India & others ... Respondents

To,

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

The humble application of the abovenamed
applicants MOST RESPECTFULLY SHOWETH as under :

1. THAT full facts and circumstances of
the case have been narrated in the accompanying
counter affidavit which may be read in support of

this application.

2. THAT it is essential in the interest of justice that in view of the facts and circumstances stated in the accompanying counter affidavit, this Hon'ble Tribunal may be pleased to kindly reject the petition filed by the petitioner otherwise the respondents shall suffer a grave irreparable loss.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to kindly reject the petition filed by the petitioner, in view of the facts and circumstances disclosed in the accompanying counter affidavit, otherwise the respondents shall suffer a grave irreparable loss.


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

Dt: 12-2-1990.

Allahabad.



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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

-000-

COUNTER AFFIDAVIT

ON BEHALF OF

RESPONDENTS.

ON

REGISTRATION O.A.NO.59/1990.

Rajendra Kumar srivastava

... Petitioner

Versus

Union of India & others

... Respondents.

Affidavit of sri Ramkaran Mishra

aged about

56 years, son of sh. Thalesu fdmst

posted as

Sr. Supdt of PWT Office -
Faizabad

(Deponent)

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

1. THAT the deponent is *ssps Faizabad*

and as such is fully acquainted with the facts of case deposed to below and has been deputed to file this counter affidavit.

2. THAT before giving parawise reply following facts are being asserted in order to facilitate this Hon'ble Tribunal in administering justice.

3. THAT the petitioner was working as an Extra Departmental stamp Vendor at Ayodhya Post Office, and a complaint was received from Smt. Kaushalya Devi, depositor, a/c no. 15537, regarding nonissue of the duplicate pass book on 21.7.1984. It has been asserted that the complainant is trying for the duplicate pass book for the last one year, but she could not get the same. A photostat copy of the complaint is being annexed with this counter affidavit and is being marked as ANNEXURE NO. I

The perusal of the aforesaid complaint would go to show that she has further reported that someone had fraudulently withdrawn the whole amount from her T.D. A/C.

4. THAT on receipt of the aforesaid complaint

the enquiry was made and it was revealed that 5 years time deposit account no. 15537 was opened ~~for~~ with initial deposit of Rs.4000/- by smt. Kaushalya Devi on 3.7.1980 and the said pass book was lost and she applied for issue of duplicate pass book through Sub-Post Master, Ayodhya. The said application for issue of pass book was forwarded by Sub-Post Master, Ayodhya, to Head Post Office, Faizabad, and the same was received at Head Office on 21.0.1984.

5. THAT the duplicate pass book was issued on 28.1.1984 by Faizabad Head Post Office ~~under receipt~~ and it was handed over to Ram Kuber, Postal Assistant, Faizabad, on 31.1.1984 under receipt.

6. THAT the said Ramkubar had handed over the duplicate pass book to the petitioner who was known to him as he had previously worked in Ayodhya Post Office for 6 years. Sri Ram Kuber has stated that the petitioner has told him that the depositor was his grandmother and had requested for the issue of the duplicate pass book early.

7. THAT after receiving the pass book from

sri Ram Kuber, the petitioner presented application for withdrawal for premature closure of the account alongwith the aforesaid duplicate pass book on 6.2.1984 at Saving Bank Counter of Ayodhya Post Office. One lady was with applicant at that time who was introduced by the applicant as depositor.

8. THAT the applicant identified the so called depositor on the application for withdrawal. He also witnesses payment on warrant of payment.

9. THAT the Saving Bank Counter Assistant effected the payment of Rs.5013.10 to the lady produced as depositor by the applicant on that day.

10. THAT the petitioner stated at the time of enquiry proceedings that he knew the depositor. He also accepted his identification on the application for duplicate pass book, application for withdrawal and on warrant of payment stating that the payment was made to the depositor in his presence. A photocopy of the statement of the petitioner is being annexed with this counter affidavit and is marked as ANNEXURE NO.II.

11. THAT the petitioner expressed his ignorance about the Smt. Kaushalya Devi, depositor/complainant but he knew Smt. Kaushalya Devi, to whom he had identified and to whom the payment was made but he could not produce her.

12. THAT it was also proved during the enquiry that the petitioner managed to get duplicate pass book from Faizabad Head Office and defrauded the government by presenting a fake lady other than the depositor and as such on 14.2.1986 the petitioner was ordered to be put off duty and proceed under Rule 8 of E.D.A.'s (Conduct & service) Rule 1965 on 22.9.1987.

13. THAT after having the full enquiry according to the principles of natural justice as well as the principles of the E.D.A. (Service & Conduct) Rules 1965 which were and the charges levelled against the petitioner were in proved the Enquiry, the disciplinary authority, after going through the enquiry report, on 31.12.1987 removed the petitioner from service.

14. THAT the petitioner filed an appeal on 15.6.1988 which was also rejected on 31.8.1988.

15. THAT the contents of paragraphs nos. 1, 2 and 3 of the petition needs no comment.

16. THAT the contents of paragraph no. 4.(i) of the petition are not correct and as such are denied. The incident which has been narrated in paragraph under reply has no relation with the petition.

17. THAT the contents of paragraphs nos. 4.(ii) and 4.(iii) of the petition are matter of record and as such needs no comment.

18. THAT the contents of paragraph no. 4.(iv) of the petition are not correct and as such are denied. It is absolutely wrong to allege that the petitioner has filed any review petition, as referred in paragraph under reply. The petitioner should be put to the strict proof of preferring the said review petition. It is further submitted that for the purpose of the present petition the petitioner has concocted the story of preferring the review petition whereas the fact remains that no such review petition has ever been sent by the petitioner.

19. THAT the contents of paragraph no.4.(v) of the petition are not correct as stated. It is further submitted that the 5 years time deposit, A/c no.15537 was opened by the petitioner at Ayodhya Post office, on 3.7.1980 with a initial deposit of Rs.4000/- only in the name of Smt. Kaushalya Devi. Rest contents of this paragraph are not correct.

20. THAT the contents of paragraph no.4.(vi) of the petition are not correct and as such are denied. Sri Ram Kuber has handed over the duplicate copy of the pass book to the petitioner as he claimed the depositor as his grandmother. It is further submitted that the application for the duplicate pass book was witnessed by the petitioner and he scribed the thumb impression on the application ^{but} ~~by~~ Sri Ram Kuber was not authorised to do so.

21. THAT the contents of paragraph no. 4.(vii) of the petition are not correct and as such are denied. It is further submitted that, as stated above, a lady impersonated as Smt. Kaushalya Devi presented the duplicate pass book and of a/c no.15537 alongwith the application for withdrawal, whose left thumb impression was scribed by the petitioner. The payment of Rs.4000,

was made to the said lady on 6.2.1984.

22. THAT in reply to the contents of paragraph no.4.(viii) of the petition it is submitted that the petitioner was ordered to be put off duty on 14.2.1986 instead of 14.12.1983, as referred in paragraph under reply.

23. THAT the contents of paragraphs nos. 4.(ix) of the petition are matter of record and as such needs no comment.

24. THAT the contents of paragraphs nos. 4.(x), 4.(xi) and 4.(xii) of the petition are not correct and as such are denied. A detail reply has already been furnished in the foregoing paragraphs hence need not to be repeated here again.

25. THAT the contents of paragraph no. 4.(xiii) of the petition are not correct as stated.

26. THAT the contents of paragraph no. 4.(xiv) of the petition are not correct and as such are denied.

The allegation which has been raised in paragraph under reply against the enquiry officer is absolutely wrong.

27. THAT the contents of paragraph no. 4.(xv) of the petition are not correct and as such are denied. It is further submitted that the thumb impression which has been affixed on the application for issue of the duplicate Pass book very much differs from the thumb impression affixed on the application for withdrawal dated 6.2.1984. However, in view of the enquiry proceedings as well as other connected records it is proved that the petitioner has presented a fake lady and got the amount withdrawn fraudulently.

28. THAT in reply to the contents of paragraph no. 5 of the petition it is submitted that in view of the facts and circumstances stated above, none of the grounds taken by the petitioner are sustainable in the eye of law and the petition is devoid on merit and is liable to be rejected.

29. THAT the contents of paragraph no. 6 of the petition are not correct as stated. It is

further submitted that the petitioner has not filed any review petition on 24.9.1988, as referred in paragraph under reply.

30. THAT the contents of paragraph no. 7 of the petition are not requiring any comment.

31. THAT the paragraph no. 7 has been repeated in this petition. However in its reply it is submitted that in view of the facts and circumstances stated above, the petitioner is not entitle for any relief as prayed in paragraph under reply.

32. THAT the contents of paragraph no. 8 of the petition needs no comment.

33. THAT there is no paragraph no. 9 and 10 in the petition hence are not being replied.

34. THAT the contents of paragraphs nos. 11, 12 and 13 of the petition needs no comment.

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Solemnly affirmed before me on this 11th
day of May 1990 at 9.30 ^{AD.} am/pm at
Allahabad by the deponent who has been identified
by the aforesaid clerk.

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

OATH COMMISSIONER.

Deponent.

श्रीमान डा. क. सी. शंकर महापात्र प्रकाश के द्वारा
श्रीमान ने श्रीमान निवेदन है कि प्रायः न. 10
3-7-80 को पोस्ट ऑफिस अयोध्या जिला हीपॉजिटर
उ. प्र. में चार हजार (4000/-) रुपया जमा
किया था जो कि दिन के बाद नहीं प्राप्त हुए नं.
15537 T.D. को रखा गइ। मैंने कई बार

08/01/23/0

Bio 6

पोस्ट ऑफिस अयोध्या परखवाले में आर गइ
आ परखवाले दिना परन्तु आज तक प्राप्त
हुक ना बन सकी जब पोस्ट ऑफिस में
जायी तब तक मरदान कर देत है।
कहत है। कि श्रीमान से वन कर आपकी
तक मिल जायेगी करीब 9 शक साल है
जमा कई अनवाइ नही है। अब हम को
पता चला है कि हमारा चार हजार रुपया
जो जमा था कई परजा परखवाले कर के
निष्पन्न किया है।

पु. 1-8-4

श्रीमान जी से निवेदन है कि

प्रायः को नं. चार हजार रुपया अयोध्या पोस्ट
ऑफिस से दिमान की कृपा की जाये। मैंने
वेवा वसहारा कोत है कई वहुत ही गरीब है
आप की कृपा होगी

प्राप्त हुके नं.
15537 T.D



श्रीमान
कौशीलादेवी

प्रायः
कौशीलादेवी
मुंनया चार सरज
तरे अयोध्या 10
वावा नारायण दास
(करतलिया वावा) का
आसुम में अयोध्या
श्रीमान

श्री राजेंद्र कुमार श्रीवास्तव ई. पी. टी. शास्त्र संस्थान ए. पी. टी. को
 वापस करवा दिया है। इस पर करीब सात लाखों से कार्य
 कर रहा है। दिनांक 6/2/78 को कोशीला देवी नामक
 एक औरत जलघर पर आई। उसने मुझे अपनी पासबुक
 मुझे देकर कहा कि मैं इस रकम से पूरा रूपाना निकालवा
 चाहती हूँ मुझे रुपये की आवश्यकता है। इसको भर दीजिए
 फिर मैंने उसकी दी हुयी पासबुक रकम संख्या 92239
 पांच लाखों सालाह का कार्य करके उसे अंगूठा लगाकर
~~करके~~ उसी औरत को दे दिया। मुझे मैं कोशीला देवी
 को जानता था इसलिये मैंने कोशीला देवी की गलाही
 उसके कहने पर किया। जो रूपाना निकालने का
 पत्रिका पत्र मुझे कांक 92/92/78 को दिरवाया गया
 और जो कि अफोधा 5 फु. टी. संख्या 32 92239
 (15537) का है उस पर लिखी हुयी निम्न इमारत में
 होम की है। (Premature closure 15537 अफोधा
 6/2/74 चार हजार + भा. (4000) निम्न नि. सं.
 कोशीला देवी व. राजेंद्र कुमार श्रीवास्तव ई. पी. टी. कोशीला देवी को
 जाना है इन्होंने मेरे सामने नि. सं. लगाया। राजेंद्र कुमार श्रीवास्तव
 वरहा अफोधा 6/2/74) कदामी की रसीद की तरफ मैंने
 5013-10 पांच हजार तेरह रुपये दस दस भा. ई. कोशीला देवी
 व. राजेंद्र कुमार श्रीवास्तव ई. पी. टी. कोशीला देवी को जानता है इन्होंने
 मेरे सामने नि. सं. लगाया और 5013-10 पांच हजार तेरह रुपये दस दस भा. ई. कोशीला देवी
 व. राजेंद्र कुमार श्रीवास्तव अफोधा पांच हजार तेरह रुपये दस दस भा. ई. कोशीला देवी
 ही लिखा है। विज्ञापन कार्य और पासबुक मैंने उस औरत को
 दे दिया उसने ही S.B. काउन्टर पर पासबुक और विज्ञापन कार्य
 दिया। जलघर में कुछ कार्यवाही पूरी होने के बाद काउन्टर
 लाइ ने रु. 5013-10 वीस मेरे सामने ही उस औरत को दे दिया।
 पीसा ले कर वह अफोधा चार चली गयी। यह वापस मैंने अपनी
 मज्जी से सोना समझ कर दे दिया है जो कि सही है।

152/5-6
 राजेंद्र कुमार श्रीवास्तव

राजेंद्र कुमार श्रीवास्तव
 15/12/74

Details of Application

1—Particulars of the Applicant :

- (i) Name of Applicant
- (ii) Name of Father/Husband
- (iii) Age of Applicant
- (iv) Designation & Particulars of Office where employed or was last employed
- (v) Office Address
- (vi) Address for service of Notice

2—Particulars of the Respondents :

- (i) Name &/or Designation
- (ii) Official Address
- (iii) Address for service of all notices

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

- (i) Order No.
- (ii) Date
- (iii) Passed by
- (iv) Subject in brief

4—Jurisdiction of the Tribunal :

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

5 - Limitation :

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

6—Facts of the case :

The facts of the case are given below.

२१/११-६ अ.मि. (१०)११६१९

4(1) The applicant was an Extra Departmental Stamp Vendor at Ayodhya P.O. in Faizabad Postal Division. He entered the ~~Extra~~ Department on 19.2.1978. He was an active worker of Extra Departmental Employees Union. There was a demonstration of E.D. Employees on 8.11.83 before Shri S.P. Ojha, the then D.P.S. Lucknow when he visited Faizabad to show their resentment against wrong revision of E.D.'s allowances. The applicant was the leader of that demonstration and he, therefore, became a sore of eye to the learned Sr. Superintendent, Posts, Faizabad (Resp.No.2) and shortly afterwards the applicant was put off duty on 14.12.83 in a fabricated case.

4(ii) After being kept under put off duty the applicant was served with a Memo of charges by the learned Sub Postmaster Ayodhya (Resp.No.1) vide his No.A/Rajendra Kumar Srivastava/DP dated 31.12.87. The Memo of charges have been reproduced verbatim in the Punishment order as well as ⁱⁿ the Enquiry Report. The applicant denied the charges and hence an Enquiry under rule 8 of E.D.A.(C&S) Rules 2 was held and the Inquiry Officer (I/O in brief hereafter) submitted his report on 3.12.1987 vide copy of Annexure A-3 on pages 14 to 17. The I/O held the charges proved and the learned Respondent No.1 awarded the applicant the punishment of removal from Service vide his Memo No.A/Rajendra Kumar Srivastava /DP dated 31.12.1987 at Annexure A-1 on Pages 11 and 12.

4(iii) The applicant preferred an appeal to the Sr.Supt. Posts, Faizabad (Respondent No.2) on 15.6.88. Notwithstanding the fact that a condonation of delay in the submission of appeal was sought for on medical grounds the learned Respondent No.2 did not condone delay and rejected the appeal as time-barred vide appellate order at Annexure A-2 on page 13.

4(iv) The applicant then preferred a review Petition before the learned D.P.S. Lucknow (Respondent No.3) on 24.9.88 vide copy at Annexure A-5 on pages 26 to 27. This review petition was submitted to D.P.S. Lucknow in accordance with rule 117 of P & T Manual Vol.II. As the same remained unattended this application is submitted before the Hon'ble Tribunal.

4(v) The facts of the case are that one Smt.Kaushalya Devi resident of Bari Chhaoni Ayodhya had opened a 5 year Time Deposit Account No.15537 on 3.7.80 with an initial Deposit of Rs.4,000/-. She was well known to the applicant as the latter had been residing close to Bari Chhaoni Ayodhya. The lady was illiterate and therefore her thumb impression on the Index Card and the Pay-in-slip was scribed by the applicant. ~~The Specimen Signature by the applicant.~~ The specimen signature Register also bears the Thumb Impression of Smt.Kaushalya duly scribed by the ^{applicant.} ~~fact.~~ Shri Ganpati Lal the then S.P.M.Ayodhya appearing as a D.W. has confirmed these facts before the Inquiry Officer.

4(vi) That the said Smt.Kaushalya Devi R/o Bari Chhaoni Ayodhya Submitted an application ^{Nov 83} ~~on 21.1.84~~ to Resp.No.1 for issuing her a duplicate Pass Book of her T.D.A/c No.15537 as the original one was stated to have fallen some-where. Even on this application the thumb Impression of Smt.Kaushalya Devi R/o Bari Chhaoni Ayodhya was scribed by the applicant. The application was forwarded by Resp.No.1 to Postmaster Faizabad. who after holding necessary enquiries ordered for the issue of a duplicate Pass Book. The said Smt.Kaushalya Devi authorised one Shri Ram Kumar L.S.G. Postal Assistant working in Faizabad Head post office to receive on her behalf her duplicate Pass Book from Postmaster Faizabad. Shri Ram Kumar accordingly receipted the duplicate Pass Book

on 31.1.1984 on behalf of Smt.Kaushalya Devi.

4(vii) On receipt of the duplicate Pass Book from Shri Ram Kumar, the said Smt.Kaushalya Devi applied on 6.2.84 to SPM Ayodhya for the prematured closure of her 5 year T.D./c No.15537. On this application too the T.I. of Smt.Kaushalya Devi, resident of Bari Chhaoni, Ayodhya was scribed by the applicant and it was on the identification of the applicant that the lady was paid Rs. 5013/- on 6.2.84.

4(viii) Here one thing is very important worth Notice viz., the date of incidence for which the applicant was awarded the Punishment of Removal from service is 6.2.84. This is the date mentioned in the Punishment order, Enquiry Report and all relevant records. This means there had been absolutely nothing against the applicant which warranted his being Put off duty from 14.12.1983. It clearly shows that he was put off duty on 14.12.83 because he participated in the demonstration before the D.P.S. Lucknow (on visit to Faizabad on 8.11.1983) and subsequently he was implicated in a fabricated case.

4(ix) Soon afterwards one lady named Kaushalya Devi accompanied by Shri Surya Narain Dass resident of Bhajan Ashram Naya Ghat, Saryu Tat Ayodhya is said to have approached the Senior Superintendent, Posts, Faizabad (Respondent No.2) and to have handed him over an undated complaint regarding forged withdrawal of Rs.4,000/- from her T.D. Account No.15537 standing at Ayodhya P.O. A copy of the said complaint is appended as Annexure A-6 on page 28. Thereon the preliminary enquiry was entrusted to Shri ^{Haughla} ~~Haughla~~ Prasad S.D.I.(Posts), Faizabad East who recorded the statement of the said lady on 12.10.1984 and that statement was written by Shri Surya Narain Dass of Bhajan Ashram, Naya Ghat, Saryu Tat Ayodhya. Its copy is appended as Annexure A-7 on page 29.

4(x) Smt. Kaushalya Devi resident of Naya Ghat. Saryu Tat was not produced before the Inquiry Officer. Her death certificate, not bearing the date of death, not granted by the Gram Pradhan or the Secretary of Vill. Bangarnau Unhao was submitted. It was submitted by the Presenting Officer himself under his own attestation before the I/O who accepted it despite protests from the applicant. Surya Narain Dass was produced before the I/O to testify the ^{ett.} ~~Sw~~ of Smt. Kaushalya Devi dated 12.10.1984 which he is said to have written before the Preliminary Enquiring Officer Shri Haushia Prasad Sharma. SDI(P) Faizabad. The learned I/O has placed full reliance on parts of the ~~ett.~~ ^{Sw} of Shri Surya Narain Dass which suited ^{him} to declare the charge against the applicant proved and did not touch the parts which rendered the whole statement as unreliable. This action of the learned Inquiring Officer had been totally against the law of Evidence and hence the findings of the Inquiring Officer are not maintainable.

4(xi) There is no denial of the fact that Smt. Kaushalya Devi R/o Bhajan Ashram, Naya Ghat was an illiterate lady. She was unable to sign and she always put her Thumb Impression. Naturally therefore while opening her T.D. Account No. 15537 at Ayodhya P.O. she must have got her Thumb ~~Impression~~ ^{Impression} attested by some one known to the Post office (as per Postal rules). The learned Preliminary Enquiring Officer (hereafter called P.E.O.) did not enquire from her as to who attested her Thumb Impression at the time ~~was~~ of opening Account. The P.E.O. further failed to ascertain as to who attested her Thumb Impression on the application for issuing a duplicate Pass Book, when the lady had flatly refused that she did not know any Rajendra Kumar (applicant) it was a must on the part of P.E.O., to have confronted the applicant and the lady and should have then asked who identified her Thumb Impression at the time of opening the T.D. Account.

4(xiii) Shri Suraj Narain Dass was not a listed witness but was examined as a prosecution witness by the Inquiring Officer against G.I.O. No.2b below Rule 14 of C.C.S.(C.C.A.)Rules

Shri Dass in his statement has deposed certain facts which believ the whole prosecution story. According to Shri Dass, Smt.Kaushalya Devi joined Bhajan Ashram at Nayaghat in May/ June, 1980 and brought with her Rs.4500/- She donated Rs.500/- to Ashram and desired to get invested the remaining 4000/-Rs. in some Bank. Shri Dass got it invested in Bank of Baroda in Current Account in the Joint name of himself (Shri Surya Narain Dass) and Smt.Kaushalya Devi. Later on it is deposed that Smt.Kaushalya Devi (a lady too illiterate to sign) withdrew the entire amount without the knowledge of Shri Dass and invested the same at Ayodhya P.O. on 3.7.1980 in T.D.Account No. 15537 This too was done without the knowledge of Shri Dass. All this is highly impossible a simple enquiry from M/s Bank of Baroda, Ayodhya Branch would reveal the fact that no current account in the Joint Name of Smt.Kaushalya Devi and Shri Suraj Narain Dass was at all opened nor was it closed 15-20 days af ter its being opened.

4(xiv) From the Enquiry Report, it is fully established that the Inquiry Officer was given a report on 'His Masters' Voice.

(a) He sent a letter to Smt.Kaushalya Devi, at her Unnao address but failed to send a letter to her at her Bari Chhaoni, Ayodhaya address.

(b) He himself compared the T.Is of Smt,Kaushalya devi obtaining on the complaint presented to S.S.Posts (Resp.No.2) and her statement dated 12.10.1984 before P.S.U. on one hand and that obtaining on the withdrawl form on the other hand and has declared that as the two did not tally the T.I. on the withdrawl form was of a forged lady.

4(xii) On behalf of the lady Smt.Kaushalya Devi, resident of Bhajan Ashram it has been confirmed that she previously resided at Bari Chhaoni in the premises of Shri Ram Pratap Dass, it was a must on the part of P.E.U, to have gone to Shri Ram Pratap Dass of Bari Chhaoni Ayodhya and to have ascertained about Kaushalya Devi. This was all not done. Above all it is undenied that the specimen signature register and the application for opening of a T.D.Account No.15537 at Ayodhya P.O. both bear the Thumb Impression of Smt.Kaushalya Devi Resident of Bari Chhaoni, Ayodhya which were identified by Shri Rajendra Kumar Srivastava (applicant). So also the application of premature closure of the said account bears the Thumb Impression of Smt.Kaushalya Devi, resident of Bari Chhaoni, Ayodhya which too was identified by Shri Rajendra Kumar Srivastava (the applicant). It was a must on the part of P.E.U, to have sent the said two applications (viz. application for opening Account and that for its closure) to the handwriting expert for obtaining his opinion whether the Thumb Impressions borne by each application were of one and the same lady or not. Had the report been in affirmative the innocence of the applicant was fully established and there was no necessity of any further enquiry. But this too was not done.

At this stage, the applicant prays that the application for opening the T.D.Account alongwith complaint preferred by Smt.Kaushalya Devi, resident of Bhajan Ashram, Naya Ghat Sarya Tat Ayodhya to Resp.No.2 (bearing her signature) may be sent to a handwriting Expert (at the cost of applicant) to obtain an opinion whether the two Thumb Impressions are of the same lady or not. This will help the court a lot to assess the magnitude of the charges levied by the respondents against the applicant.

Had the learned Inquiry Officer compared the T.I. of Smt. Kaushalya Devi obtaining on her application for opening the T.D. Account with those obtaining on her complaint and her statement dated 12.10.1984 before the P.E.U. he would have noticed the difference that a fake and forged lady had preferred the complaint.

4(xv) Had the learned I/O. compared the T.Is of Smt. Kaushalya Devi obtaining on her application for opening the T.D. Account and that for her closing that Account he would have noticed the similarity and he would have felt fully convinced with the innocence of the applicant. But he could not do that under the pressure of his Master (Respondent No.2) who had a pre-plan of dismissing the applicant because he demonstrated against him (Resp. No. 2) before the D.P.S. Lucknow on 8.11.1983.

5. Grounds for Relief sought for -

(a) The Punishment order is bad in law because it has been passed with a mala fide intention. The applicant was put off duty on 4.12.1983 when the admitted date of incidence resulting to his removal from service is 6.2.1984.

(b) Because a complaint of non-receipt of amount was got made from a forged and fake lady who was neither produced before the Inquiry Officer nor was her proper Death Report submitted.

(c) Because the P.E.O. wilfully suppressed inquiry on most material part of the case.

(d) Because the learned Inquiry Officer acted basically against the Law of Evidence by accepting

only certain

~~of~~ portion of the statement of ²witness which suited his convenience and rejecting the other which did not suit him.

(r) Because the learned Respondent No.2 rejected the appeal as time barred without considering the application for condonation given on Medical ground.

6. Remedies exhausted.

The applicant preferred an appeal on 15.6.88 to Respondent No.2 who rejected it on 13.8.88 vide appellate order at Annexure A-2 on page 13. He further submitted a review petition to D.P.S. ~~who~~ on 24.09.1988 which has remained unattended hence this application is being submitted.

7. Matters not previously filed or pending with any 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.

7- Reliefs sought :-

The applicant prays for the grant of following reliefs :-

(1) That the Punishment Order No. A/Rajendra Kumar Srivastava/DP dated 31-12-87 issued by SPM Ayodhya and the appellate order No. P-1/3/88-86 issued by the Sr. Supt. Posts Faizabad may both be set aside and the applicant may be put back to his old post with retrospective effect.

(2) That he may be granted the cost of this suit.

8. There is no prayer for any interim relief.

11- If application is sent by Regd. Post, does the applicant desire to have oral hearing at the Admission stage if so he must attach a self addressed P. C.

12- Particulars of the Postal Order in respect of the application :

- (i) No. of I. P. O. **DD9/650342**
(ii) Name of Issuing P. O. **Purshottamagar P.O.**
(iii) Date of Issue **21-11-89**
(iv) P. O. at which payable— **Allahabad Head Post Office**

13- List of enclosures :

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

In verification

I, **R.K. Srivastava s/o Shri Rajendra Kumar Srivastava** aged **49** years R/O **Vill. Dargah PO Ayodhya** and working as **ED Stamp** do hereby verify that the contents from Paras 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Place - Allahabad

Date **21-11-89** 19

To

The Registrar, Central Administrative Tribunal, Allahabad - 211001

Signature of applicant

(R. K. Tewari)

Advocate

154, Purushottam Nagar,
Allahabad-16

Annexure 1-1

गारलाय डीका विभाग

कार्यालय - उपडाकपाल (सम० सं० जी०)
अयोध्या, फैजाबाद 224123

शापन सं० २/राजेन्द्र कुमार श्रीवास्तव/डी०पी०
अयोध्या 224123 दिनांक 21-2-1987

श्री राजेन्द्र कुमार श्रीवास्तव अतिरिक्त विभागीय रिपोर्ट विजेता अयोध्या, फैजाबाद (कार्य प्रथक) को इस कार्यालय के शापन संख्या सम दिनांक 22-9-87 द्वारा अतिरिक्त विभागीय रजिस्ट्रार (आचरण एवं सेवा) नियमावली 1964 के नियम 8 के अन्तर्गत एक आरोप पत्र देकर जांच प्रस्तावित की गयी थी। उक्त शापन के साथ दुराचार एवं कदाचार का सार भी संलग्न करने के साथ श्री राजेन्द्र कुमार श्रीवास्तव को दिया गया था जो मूल रूप में निम्नवत है:-

1. यह कि उक्त श्री राजेन्द्र कुमार श्रीवास्तव ने अतिरिक्त विभागीय रिपोर्ट विजेता उपडाकपाल अयोध्या के दिनांक 6-2-84 को कार्य करते हुए 5 वषीय सावधि खाता संख्या 15537 में मु० 5013-10 (पाँच हजार तेरह हजार दस पैसे) की निभासी के सम्बन्ध में फर्जी व्यक्ति की मनाही की। अस्तु आरोपित है कि उक्त श्री राजेन्द्र कुमार श्रीवास्तव ने अतिरिक्त विभागीय रजिस्ट्रार (आचरण एवं सेवा) नियमावली 1964 में वर्णित नियम 17 का उल्लंघन किया। "

2. उक्त मामले में विस्तृत जांच हेतु इस कार्यालय के शापन संख्या सम दिनांक 22-9-87 द्वारा श्री शिवराम कुंभार डिप्टी पोस्ट मास्टर फैजाबाद को जांच अधिकारी एवं श्री बी० एन० आर० सिंघाणिया कार्यालय सहायक मण्डलीय कार्यालय फैजाबाद को प्रस्तावित अधिकारी नियुक्त किया गया था। वंचाव सहायक के रूप में श्री राम निहार लाल सेवा निवृत्त पोस्ट मास्टर गौररवपुर (राजपत्रित) को कार्य किया।

3. जांच अधिकारी ने अपना जांच कार्य दिनांक 15-10-87 को प्रारम्भ किया। उक्त विधि को जांच अधिकारी के समक्ष दोषारोपित कर्मचारी उपस्थित हुआ और अपने ऊपर लगाये गये आरोपों को अस्वीकार किया। जांच अधिकारी ने अपना जांच कार्य दिनांक

अ-1287 को समाप्त करके अपने पत्रांक ई0ओ-3/87 दिनांक 31-2-87 द्वारा जांच आख्या प्रेषित कर दिया।

4. मैनें जांच अधिकारी की जांच आख्या, प्रस्ताव अधिकारी को लिखित, बच्चाव पक्ष द्वारा प्रस्तुत लिखित सार एवं सम्बन्धित अभिलेखों का अध्ययन किया। जांच आख्या के अनुसार श्री राजेन्द्र कुमार श्रीवास्तव आरोपित कर्मचारी को अपर लगाये गये आरोप सिद्ध पाये गये हैं। मै जांच अधिकारी की आख्या से पूर्णतः सहमत हूँ। आरोपित कर्मचारी ने दिनांक 6-2-84 को अयोध्या डाकघर स्थित 5 तर्फीय सावधि जमाखता सं० 15537 से किसी फजी महिला को वास्तविक जमाकर्ता के रूप में प्रस्तुत करके तथा उसकी गवाही करके सं० 5013-10 पी० का भुगतान करा दिया। ऐसा करके उक्त आरोपित कर्मचारी ने अतिरिक्त विभागीय एजेंट (आवरण एवं सेवा) नियमावली 1964 के नियम 17 के अनुकूल कार्य नहीं किया। ऐसी दशा में उक्त आरोपित कर्मचारी को विभाग की सेवा में बनाये रखने का कोई औचित्य नहीं है।

आदेश

मै, जगत चारी निम्न उपडाकघर (एल०एस०जी०) अयोध्या, भोजाबाद उक्त श्री राजेन्द्र कुमार श्रीवास्तव अतिरिक्त विभागीय डाक रिक्त बिकेता अयोध्या, भोजाबाद (कार्यपुथक) को सेवा से निष्कासन (रिक्त प्राम सविसे) का आदेश देता हूँ, जो तत्काल से प्रवर्ती होगा।

जगत चारी निम्न 31-2-87

(जगत चारी निम्न)
उपडाकघर (एल०एस०जी०)
अयोध्या भोजाबाद

श्रीतेलिपि निम्नलिखित को सूचनाथ एवं आवश्यक कार्यवाही हेतु प्रेषित। -

- 1. श्री राजेन्द्र कुमार श्रीवास्तव अतिरिक्त डाक रिक्त बिकेता अयोध्या, भोजाबाद (कार्यपुथक) जांच रिपोर्ट की एक प्रति संलग्न है।
- 2. सीनियर पोस्ट मास्टर भोजाबाद 22400।
- 3-5. अपर अमीयक डाकघर भोजाबाद मण्डल, भोजाबाद के 'स्थापना', 'संतोष' तथा 'अमला' अनुच्छेद हेतु।
- 6-7. कार्यालय तथा अतिरिक्त प्रति।

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Annexure A-2

Pythagoras
K.M. 255 dated 10/10/80/13 5220

भारतीय डाक विभाग

कार्यालय प्रथम अधीक्षक डाकघर, फजाबाद मण्डल, फजाबाद 224001
आपन संख्या एफ-1/5/85-86 दिनांक फजाबाद 31-8-1988/13 5220
.....

श्री राजेन्द्र कुमार श्रीवास्तव, भूतपूर्व अतिरिक्त विभागीय
स्टेम्प वेन्डर, ज्योधसा फजाबाद ने सब पीएच ट मास्टर ज्योधसा फजाबाद
के आपन संख्या ए/राजेन्द्र कुमार श्रीवास्तव दिनांक 31-12-87 द्वारा
पारित दण्डादेश " सेवा से निष्कासन " के विरुद्ध अपील दिनांक
15-6-88 भेजी है, जो इस कार्यालय में दिनांक 20-6-88 को प्राप्त हुई
है। अपीलार्थी ने उक्त आपन प्राप्त होने की तिथि 12-1-88 बताया है।
इस प्रकार यह अपील निर्धारित समय सीमा के बाहर भेजी गई है।

अपीलार्थी ने अपनी अपील के पैरा 21 में लिखा है कि उपरोक्त
दण्डादेश मिलने के बाद से वह गम्भीर रोग से बीमार चल रहा है और बाजार
के डाक्टरों के इलाज में रहा है। सभी डाक्टरों के प्रेसक्रिप्शन की फोटो
प्रतिलिपियाँ भी अपील के साथ सलगनक एन-1 से एन-7 तक भेजा जाना
बताया है किन्तु किसी भी प्रेसक्रिप्शन की फोटो प्रति वास्तव में सलगन नहीं
की गई है। क्लिप का कारण धिक्कसनीय नहीं लगता। अतः अपील निर्धारित
सीमा अंतर्ध के बाद प्राप्त होने के कारण उस पर विचार किये जाने का कोई
औचित्य नहीं है। इस लिए अपीलकर्ता को अपील अस्वीकार की जाती है।

: कमलेश चन्द्र मिश्र :
आई.पी.एस.
प्रथम अधीक्षक डाकघर
फजाबाद मण्डल, फजाबाद।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु :-

1. श्री राजेन्द्र कुमार श्रीवास्तव, भूतपूर्व अतिरिक्त विभागीय
स्टेम्प वेन्डर ज्योधसा, फजाबाद।
2. उक्त डाकपाल ज्योधसा फजाबाद।
3. स्थापना अनुभाग मण्डलीय कार्यालय, फजाबाद।
4. कार्यालय प्रति।
5. अतिरिक्त प्रति।

Annexure A-4

To,

The Senior Supdt. Post Offices
Faizabad Division,
Faizabad.

Subject;- Appeal against the order of the Sub Postmaster
Ajodhya imposing penalty of removal from
service vide Memo. No. A/Rajendra Kumar Srivastava
dated 31.12.87 delivered on 12.1.88
(copy enclosed as annexure A).

Sir,

The above named appellant ^{Rajendra}
Kumar Srivastava begs to submit as under;-

Facts of the case in brief are that the
appellant was appointed as E.D. Stamp Vendor Ajodhya
by the then Inspector of Post Offices Faizabad East
with effect from 19.2.78. The appellant was performing
his duties to the best satisfaction of public and
there has been no public complaint against the appellant.

2. That the appellant was active worker of the
E.D. Union and in connection with illegality committed
by the then Senior Supdt. Post Offices Faizabad in
revision of allowances of E.D. A's there was demon-
stration of E.D. employees before Shri S.P. Ojha the then
D.P.S. Lucknow on 8.11.83 at Faizabad and the appellant
had also participated.

3. That thereafter the appellant and other
eight or nine active worker of the Union were ordered
to be put off duty. The appellant was put off duty
vide memo. No. A/Ajodhya dated 14.12.83 by the then
S.P.M. Shri Ganpat Lal illegally without jurisdiction
because he was inferior in rank than the appointing
authority viz. Inspector of Post offices.

4. That one Smt. Kaushilya Devi r/o Bari Chauni Ajodhya had opened 5 year T.D. A/C No. 15537 on 3.7.80 with initial deposit of Rs. 4000/- She was well known to the appellant as appellant was living near Bari Chauni Ajodhya. She was illiterate and therefore her thumb impression on index card and pay slip was scribed by the appellant. On specimen slip pasted in specimen signature book the thumb impression of said Smt. Kaushilya Devi was also scribed by the appellant. This fact has been admitted by Shri Ganpati Lal (D.I.).

5. That the said Smt. Kaushilya Devi r/o Bari Chauni applied for issue of duplicate Pass book on the Nov 84 ~~around that the~~ ^{because her} pass book was lost. Reasons shown in her application was "fallen some where". The copy of said application dated 2.1.84 is attached as annexure (B).

6. That on the said application the Thumb impression of Smt. Kaushilya Devi r/o Bari Chauni Ajodhya was scribed by the appellant as she was well known to the appellant. The S.P.M. Ajodhya Shri Ganpati Lal forwarded application for issue of duplicate pass book to Postmaster Faizabad after making necessary enquiry and verifying contents from ledger of said A/C maintained at Ajodhya.

7. That said Smt. Kaushilya Devi applied for premature closure of T.D. A/C No. 15537 on 6.2.84 on receipt of duplicate P.B. through Shri Ram Kumar and she approached the appellant for identification and scribing her thumb impression. She was paid Rs. 5013/- on 6.2.84 and on the receipt portion the appellant scribed the thumb impression. Copy of S.B. 7 is attached as annexure (C).

8. That an application from some lady purported to be Kaushilya Devi r/o Nayaxhat Sarju Tat Ajodhya c/o Baba Narayan Dasa Kartabia Baba Anram Nayaxhat Ajodhya addressed to Shri Munni Lal Kurasi said to have been received in office of S.S. Post Faizabad (copy enclosed as annexure (D)). ^{was received}

date nor any one had scribed the thumb impression or that the said lady was Smt. Kaushilya Devi. No one had identified her to be Smt. Kaushilya Devi.

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9. That the said ²⁰ called Smt. Kaushilya Devi applicant and complainant neither disclosed in her application (annexure D) nor her statement dated 12.10.84 that she was ever residing at Bari Ghouni Ajodhya. In her statement she deposed that she was not knowing the appellant when record viz. Index Card specimen signature shows that at the time of opening a/c in 1980 she was identified by appellant and ~~and~~ she was knowing the appellant. The statement dated 12.10.84 was illegally brought on record of enquiry and is attached as annexure (F). This statement was brought on record in spite of objection raised by appellant (copy attached as annexure (G)).

10. That during the enquiry Shri Surya Narain Das Kastalia Baba who was produced before the enquiry officer as new evidence though illegally brought out new story which makes the witness unworthy of reliance. He deposed that said complainant came to Kastalia Baba Anram in May or June 80 and gave him Rs. 4500/- . He got opened the account of Rs. 4000 /- in Baroda Bank in joint name. After that she withdrew the amount from Baroda Bank without his knowledge and this information was received by him when he made enquiries at Baroda Bank. She again returned to said Anram after some time and said Shri Surya Narain enquired from her when she had deposited the amount as Bank Hatt (Babu) had told that money was withdrawn. She told that she had deposited the money at Ajodhya Post Office. He also deposed that she told that her pass book was lost and he directed her to go to Ajodhya post office and apply for duplicate pass book. It may be noted that at the time of opening of new A/C she had given her address Bari Ghouni. At the time of applying for duplicate P.B. she had given her address Bari Ghouni. Such evidence was fabricated and concocted by the Department (copy of statement is attached as annexure (J)).

The appeal is submitted on the following grounds:

Grounds of appeal

Because the order of put off duty, charge sheet appointment of enquiry officer enquiry conducted by Shri S.R. Apte and his enquiry report and punishment order imposed is illegal and without jurisdiction.

2. Because the entire case is based on conjecture and surmise without any evidence and the proceeding was initiated mala fide.

3. Because the enquiry officer has conducted the enquiry in utter disregard of principles of natural justice and in violation of rule 14 of the C.C.S. (C.C.A) Rules 1965 and Govt. orders.

4. Because the finding of enquiry officer and disciplinary authority is based on no evidence rather on conjecture, surmise and inadmissible evidence and concocted and fabricated story.

The important issue to be decided is that lady who submitted application to Shri M.L. Kureal S. Post Faizabad in 1984 (No date written) and whose statement was recorded by Shri Haushile Prasad and written by Shri Suraj Narain was the depositor of the T.D./C No. 15537 and is there any evidence to prove that said lady complainant named as Kaushilya Devi was real depositor. Shri Haushile Prasad Sharma has admitted that he did not make any enquiry at Beri Chauni from Mahant of Beri Chauni to establish that said lady named as Kaushilya Devi was in fact Kaushilya Devi residing earlier at Beri Chauni. Shri Haushile Prasad Sharma P.W. has admitted that no confronting enquiry was made. The said lady was not produced in Post Office

contd. on page 13.....