

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE Review 475 of 1990 (U)  
in

Name of the parties O.A. 274 of 89 (U)

Swamy Dyal Publishing Applicant.

Versus.

Union of India Respondents.

Part A.B.C.

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Check  
24/6/11

Certified that no further action is required to be taken and that the same is sent for consideration to the concerned room on

26/6/11  
Log

Review Appd. No. 475/90 (L)

in

O.A. No. 274/89 (L)

(A)

Ar

or:

Review Appd. No 474/90 (L)

has been filed in O.A. No.

274/89 (L) on 3/8/90.

The case bearing O.A.  
was decided by the

Bench of Hon. Mr. Justice -

K. Nath, V.C. and Hon.

Mr. K. T. Ranay, A.M.

On dated: 6/7/90.

The Author of the  
Judgement is Hon.

Mr. Justice K. Nath,  
V.C.

Application is within  
time.

S. f. O.

See  
3/11/90

378/90

Recd. copy of judgment  
summons for applicant  
29/11/90

(A2)

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Review Application No. 475 of 1990 (L)

In

Registration O.A. No. 274 of 1989 (L)

Swami Dayal Mishra ..... Applicant

Versus

Union of India & Others ..... Respondents

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

Hon. Mr. K. J. Raman, Member (A)

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

This is an application for review of our judgement dated 6.7.1990 whereby the applicant's petition for quashing the order of his dismissal from service was dismissed.

2. The applicant was working as E.D.B.P.M. and used to deal with Money Orders. He was charged for ~~his~~ having misappropriated certain money order amounts and to have placed forged vouchers of payment on record.

3. The various points raised by him in the original application were considered and rejected. In this Review Application two points have been emphasized. Firstly, he had applied for copies and inspection of several documents of which only two were furnished and third was shown on the remaining six were neither shown nor furnished. The defence was that the documents which were not shown were not relevant. An observation was made by this Bench that the applicant had not filed the copy of the application by which he had called for the documents, nor he had stated the relevancy of each of the documents to enable the Tribunal to find out whether they were relevant or not. It was noticed that the Inquiry Officer had recorded reasons for his view that the documents were irrelevant and that the applicant had failed to show that the

reasons were invalid. With this Review Application a copy of the application dated 11.1.88, Annexure-A only for inspection, not copy of papers, has been filed. We cannot take notice of this document now because it cannot be said to be any new material which could be a basis for review.

4. The second ground is that relevant pages of Mail Peon Register which was used in the course of the enquiry had been replaced but that Register was not produced before the Tribunal. According to the applicant this Tribunal should have asked the Department to produce the Register for its own inspection in order to enable it to arrive at the findings whether the Register had been tampered <sup>wuk</sup> or not. In para 8 of the judgement under review it is clearly stated that a copy of the Inquiry's report which was read over at the time of hearing showed that the Inquiry Officer had recorded cogent reasons for his view that the pages of Mail Peon Register had not been replaced. The Tribunal did not consider it necessary, in the circumstances, to summon the Register *suo motu*. In doing so the Tribunal had not committed any error apparent on the face of the record.

5. One more ground stated in the Review Application is that the orders of the disciplinary authority and the appellate authority were non speaking orders. This aspect of the case had been fully considered in the judgement under review and does not call for any reconsideration. The Review Application is dismissed.

*[Signature]*  
Member (A)

*[Signature]*  
Vice Chairman

Dated the 4<sup>th</sup> Oct., 1990.

RKM

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD  
Central Administrative Tribunal  
CIRCUIT BENCH, LUCKNOW

Circuit Bench, Lucknow  
Date of Filing 13.18.1986.

Date of Receipt by Post.....

Deputy Registrar (1)  
9/11/3/18/1986

Civil Misc. Case (Revision) No. 475(L) of 1990

Review No. 475/90 (2)  
Jm

O.A. 274/89 (2,

Swami Dayal Mishra, s/o late Guru Sharan Mishra  
r/o village Waidaha, P.O. Waidaha, Distt. Sultanpur

..... Applicant

In Re: O.A. NO. 274 (L) of 1989

Swami Dayal Mishra ..... Applicant

Vs

Union of India through  
the Secretary, Telecommu-  
nication (Postal),  
Parliament Street,  
New Delhi & 2 others.... Respondents

Decided on 6-7-1990

APPLICATION FOR REVIEW UNDER ORDER 47, RULE 1, C.P.  
CODE READ WITH SECTION 22 (3) (F) OF THE ACT NO. (II)  
OF 1985, OF THE JUDGEMENT AND ORDER DATED 6-7-1990  
DESPATCHED THROUGH THE POST OFFICE BY THE REGISTERED  
POST ON 11-7-1990 AND RECEIVED BY THE APPLICANT'S  
COUNSEL AT LUCKNOW ON 13-7-1990 IN THE AFTERNOON,  
PASSED BY THE HON'BLE VICE-CHAIRMAN, MR. JUSTICE  
KAMLESHWAR NATH AND PRONOUNCED AT ALLAHABAD ON 6-7-1990  
IN O.A. NO. 274 (L) OF 1989, DISMISSING THE APPLICATION  
ON THE FOLLOWING FACTS AND GROUNDS:-

1. Because the applicant had applied to the Enquiry Officer on 11-1-1988 for the copies and inspection of 9 documents including the complaints in respect of the two money orders in question mentioned at serial Nos. 1 and 2 of the application and the perusal of the same would show that the rest 7 documents, the copies or

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inspection of which were denied to the applicant, were very important and relevant documents which would have helped and enabled the applicant to prepare his defence. The applicant is filing herewith a true copy of that Application as Annexure-A to this review application.

2. Because the submission of the above respondents to the effect that the Postman Register (Mail Peon Register) had not been tampered with is not quite correct and the shape and the position of that Postman Register, which is vital for the purposes of the case, would only reveal that its pages have been changed, replaced by forged ones and there are overwritings and mutilations on its important pages.
3. ~~Because~~ Because this Hon'ble Tribunal ought to have asked for and inspected that Register to find out the truth in the matter. Mere statement of the learned counsel for the respondents cannot be taken as the whole truth unless the Hon'ble Tribunal itself inspects it.
4. Because no cogent evidence of replacement of the pages of the above Register could be produced or made available since the only cogent evidence is its inspection by this Hon'ble Tribunal itself. So far as the applicant is concerned, his case has through out been that the said Register had been tampered with and this fact is clear from his own statement at the enquiry, his submission in the arguments that the Register had been tampered with, as also in the written Brief supplied by the applicant at the enquiry, as also the groundstaken by him in Appeal to the Respondant No. 3 will all show that the applicant had always complained about the tampering with of the said Register in different ways. The finding of this Hon'ble Tribunal to the effect that the Register had not been tampered with/ replaced is only based on surmise and assumption.

*Kamlesh*

(Pb)

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5. Because one B.R. Shashtri had made a preliminary enquiry in the matter and non-furnishing of his report was prejudicial to the applicant if he wanted to cross-examine him with reference to that report during his production as a state witness at the enquiry. Whether Shri Shashtri was actually examined at the enquiry or not is a different thing.

6. Because this Hon'ble Tribunal has observed that in the absence of the applicant and his legal assistant on the two dates in question, namely on 11-4-1988 and thereafter on 25-4-1988, the Enquiry Officer rightly proceeded ex-parte against the applicant. Technically this Hon'ble Tribunal may feel it right, but the fact remains that it amounted to denial of reasonable opportunity of defence to the applicant. Even if the defence assistant did not appear, an opportunity ought to have been furnished to the applicant to engage another defence assistant but it was not proper for the Enquiry Officer to have ordered the applicant himself to defend his case.

7. Because anyway all the above points raised on behalf of the applicant at the enquiry go to show that the attitude of the Enquiry Officer, right from the very beginning, was hostile to the applicant and pin-pricks were meted out to the applicant.

8. Because this Hon'ble Tribunal has been pleased to observe that the Disciplinary Authority had not discussed the findings and that this fact is technically correct. After this observation, merely saying that since the Disciplinary Authority had agreed with the findings at the enquiry, without discussing the findings, will certainly not show that it was a speaking order. His order would have been correct had he actually discussed the findings.

9. Because likewise, it cannot be said that the appellate order is a speaking order merely on the ground

*Kamleshwar Singh*.....4

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that he had agreed with the order of the Disciplinary Authority. Such agreement or otherwise will be manifest only from the discussions.

10. Because there are sufficient reasons on the record to warrant a review of the order dated 6-7-1990 passed by this Hon'ble Tribunal since no appeal has been provided or allowed under the Administrative Tribunals Act 1985 (Act No. II of 1985).

P R A Y E R

Wherefore the applicant most respectfully prays that this Hon'ble Tribunal may be pleased to review it above said order dated 6-7-1990 and be pleased to allow this Application by recalling or setting aside the order dismissing the above referred application and be pleased to allow that application with costs in favour of the applicant and against the respondents.

*Swami Dayal Mishra*

Dated: Lucknow  
3-8-1990.

(SWAMI DAYAL MISHRA)  
APPLICANT

In verification:

I, Swami Dayal Mishra, the applicant abovenamed do hereby verify that the contents of paras 1 to 10 of this application are true to my personal knowledge and belief.

Signed and verified this 3rd day of August, 1990, at Lucknow:

*Swami Dayal Mishra*

(SWAMI DAYAL MISHRA)

APPLICANT.

Note 1, Annexure A and the Certified Copy of the Judgment and order dt. 6-7-90 are attached hereto.

2, The power of the Counsel S. B. Mishra is on the original file. Advocate  
Counsel for the applicant  
3-8-90

Sri Siya Ram Verma, E.O.,  
& S.P.M. (L.S.G.) Amethi,  
Sultanpur.

Sir,

The following additional documents may kindly be directed to be made available for inspection by the defence which are necessary for preparation of the statement of defence :-

1. copy of complaint from the payee or remitter or by both in respect of Pantnagar M.O. No. 679 dated 19.5.86 for Rs.500/- .
2. copy of similar complaint from the payee or remitter of Swami Ram Tirth Nagar New Delhi M.O. No.1543 dated 16.4.86 for Rs.500/-.
3. A copy of the Preliminary enquiry report of Sri B.R.Shastri S.D.I.(P) Sultanpur who is appearing as a S.W.
4. copy of the list of Money Orders paid at Waidaha B.O. as verified by the mail overseer in May 1986.
5. copy of the list of Money Orders paid at Waidaha B.O. as verified by the line overseer in the month of April 86.
6. copy of report if any made by the line o.p. in April 86 & May 86. against the S.P.S. or the E.D.M.P. of Waidaha B.O.
7. Error Book of Waidaha B.O. concerning March 86 to June 86.
8. Order Book of Waidaha B.O.
9. Visit Book of E.D.M.P., Waidaha B.O. for April 86 & May 86.

The above documents are essential from the defence view point and these must be available with the D.A. or (at Waidaha B.O. IN r/o those @ S.No. 7 to 9).

The list of D.W's will be furnished after the closure of the state case as there is apprehension of laying undue pressure on them by the O.P.

*Swami Dayal Misra*

Yours faithfully,

*Swami Dayal Misra*

(SWAMI DAYAL MISRA)

S.P.S.

Dt. 11.1.88

*Re: chamber*  
*Defence Ass't*

11/1/88

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,

CIRCUIT BENCH

LUCKNOW

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

Swami Dayal Mishra

...Applicant.

versus

Union of India & others

...Respondents.

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

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

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

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

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

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

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

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

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

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

It is significant that the petitioner had not filed



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

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

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



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

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



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

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

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



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orders. The contention is not quite correct.

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

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

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

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

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



Sd/  
A.M.

Sd/  
V.C.

Dated May, 1990.

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

(SHARAD KUMAR  
SECTION OFFICER  
Central Administrative Tribunal  
Allahabad.

Sd/  
G. 7.90

Sd/  
6.7.90  
Vice Chairman

Dated the 6<sup>th</sup> July, 1990.

SL. No. 359

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH, ALLAHABAD

No. CAT/

49172

Dated: 9-7-1990

OFFICE MEMO

CM 120/90

CM 196/190

REGISTRATION NO. Q/A/O.A.

274 OF 19

89 (L)

S. D. Mishra

APPLICANT

VERSUS

Union of India & Ors

RESPONDENTS

A copy of the Tribunal's Order dated 6-7-90

in the above noted case is forwarded for necessary action.



grd 6/7-90  
Section Officer

Encl: Copy of Order dated

6-7-90

To,

Sri S. B. Mishra Advocate 2/8 308/49 Rani  
Bahari Lal Road, Lucknow.  
Sri K. C. Sinha Advocate C. A. T. Allahabad.

Gupta/