FORM NO. 21

(*See* rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ...BENCH

OA/TA/RA/CP/MA/PT O.A. 165 of ~~20~~ 90

Anil Kumar Singh Solanki .....Applicant(S)

Versus

U.O.I. .....Respondent(S)

INDEX SHEET

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B.C. File weeded and destroy

Certified that the file is complete in all respects.

Signature of S.O.

Signature of Deal. Hand

8/6/12

15/5/90

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 165 of 1990(L)

APPLICANT(S) A K Singh

RESPONDENT(S) U.O.I.

Particulars to be examined	Endorsement as to result of examination
1. Is the appeal competent ?	Yes
2. a) Is the application in the prescribed form ?	Yes
b) Is the application in paper book form ?	
d) Have six complete sets of the application been filed ?	
3. a) Is the appeal in time ?	Yes
b) If not, by how many days it is beyond time?	
c) Has sufficient case for not making the application in time, been filed?	
4. Has the document of authorisation/ Vakalatnama been filed ?	Yes
5. Is the application accompanied by B.D./Postal Order for Rs.50/-	Yes
6 Has the certified copy/copies of the order(s) against which the application is made been filed?	Yes
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application been filed ?	Yes
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	
c) Are the documents referred to in (a) above neatly typed in double sepce ?	Yes
8. Has the index of documents been filed and pagging done properly ?	Yes
9. Have the chronological details of representation made and the out come of such representation been indicated in the application?	Yes
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?	No

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Particulars to be Examined	Endorsement as to result of examination
11. Are the application/duplicate copy/spare copies signed ?	Yp
12. Are extra copies of the application with Annexures filed ?	Yp
a) Identical with the Original ?	Yb
b) Defective ?	
c) Wanting in Annexures Nos _____ pages Nos _____ ?	
Have the file size envelopes bearing full addresses of the respondents been filed ?	No
14. Are the given address the registered address ?	Yp
15. Do the names of the parties stated in the copies tally with those indicated in the application ?	Yp
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?	NA
17. Are the facts of the case mentioned in item no. 6 of the application ?	Yp
a) Concise ?	
b) Under distinct heads ?	
c) Numbered consecutively ?	
d) Typed in double space on one side of the paper ?	
18. Have the particulars for interim order prayed for indicated with reasons ?	Yp
19. Whether all the remedies have been exhausted.	Yb

dinesh/

OA 165/90

17/5/90 Hon. Mr. Justice K. Nath, V.C.
Hon Mr. K. J. Raman A.M.

By the order dated 15/3/90 Censure entry was awarded to the petitioner in respect of his performance as Additional Director, Industries, Department of Govt. of U.P. for the year 1978-81. The petitioner, according to Para 4.8 was promoted to ~~the~~ I.A.S on 7/9/89. The question is ~~that~~ whether the Tribunal has jurisdiction to adjudicate upon the adverse ~~censure~~ entry in question for acts committed during his employment in the state Government.

The matter be listed for admission on 28/5/90.

A.M. V.C

28/5/90 Hon. Mr. P.C. Jain, A.M.
Hon. Mr. V.P. Sharma, J.M.

Heard the learned counsel in the matter of admission of the OA.
Order reserved.
List it on 30/5/90.

J.M. A.M.

SD
Received copies of Judgment dated 28.5.90 today
4.6.90

Received two copies
10.8.90.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH AT LUCKNOW

O.A. NO. 165/90 (L) Date of Decision 30.5.1990

Anil Kumar Singh Solanki ..... Applicant.

Versus.

Union of India & Others. ..... Respondents.

PRESENT:

Shri. R. Raman, learned counsel for the applicant is present.

COARM:

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

(Judgement of the Bench by Hon. Mr. P.C. Jain, A.M.)

In this application under Section 19 of the Administrative Tribunals' Act, 1985, the applicant who is working as the Additional Director of Industries, U.P., Kanpur has assailed / confidential Office Memorandum dated 15.3.1990 (Annexure A11) whereby, he was awarded, for his work as Additional District Magistrate (Executive) Varansi, U.P., during the period 1978-81 an entry of censure and his Integrity certificate was also withheld. He has prayed that the impugned censure entry at Annexure A11 be declared as null and void and the same be quashed. The interim relief prayed for is to the effect that the respondents be directed not to take into consideration the impugned censure entry for the purposes of applicants confirmation in the I.A.S and for any service matter detriment to the interest of the applicant during the pendency of the application.

2. The relevent facts, in brief, as disclosed in the application are that the applicant was appointed to the U.P. Civil Service (Executive Branch) on 20.10.1972 and was allotted ~~xxx&xxxxx&&xx~~. seniority of 1964. He was promoted to the

Contd....2/-

AS

senior scale of the Civil Service w.e.f. 1.1.1976, wherein, he was confirmed w.e.f. 30.1.1984. In the mean time he was promoted to the Special Grade posts in the scale of Rs. 1840-2400, since revised to Rs. 4100-5300, in December 1979. He was selected and appointed to the Special Grade posts in the scale of Rs. 2300-2700, since revised to Rs. 4500-5700, vide Radiogram dated 17.3.1989 from Chief Secretary to the Govt. of U.P. Lucknow to all Commissioners. He was appointed to the I.A.S. and placed on probation for a period of 1 year w.e.f. 7.9.89 vide order at Annexure A-2.

3. The applicant's case is that while working as Additional District Magistrate and Additional Collector, Varanasi, he passed certain judicial orders in three cases, in respect of release of coal under the Essential Commodities Act, 1955. Vide Commissioner Allahabad Division D.O. letter dated 19.4.85 he was asked to furnish his explanation regarding the irregularities mentioned therein allegelly committed by him in passing the aforesaid judicial orders. He furnished his explanation dated 8.5.85. However, he again received the same communication vide Commissioner, Allahabad Division D.O. letter dated 28.5.88 calling for the explanation. He sent a detailed explanation dated 29.9.89 to the Secretaryto the Govt. of U.P. in the Appointment Department. His contention is that the impugned order dated 15.3.90 is wholly illegal & nulity in the eyes of law, is beyond jurisdiction asthe irregulation alleged pertain to judicial orders passed by him in exercise of judicial ~~functions~~ powers.

4. O.A. come up for admission on 17.5.90. And question on

Contd....3/-

the point of jurisdiction crept up . It was directed to be listed for admission on 28.5.90. We have heardthe learned counsel for the applicant on the point of jurisdiction,. It was pressed ~~on~~ before us thatthe applicant having already ~~being~~ been appointed to the I.A.S, U.P. Public services Tribunal has no jurisdication . It was also argued that if the OA is not adjudicated upon by the Central Administrative Tribunal, the applicant will be left with no alternative remedy.

5. After carefull consideration of the matter, we are of the view that the Central Administrative Tribunal does not have jurisdection in the matter of the main relief prayed for in this application. Para 4.17 of the OA states that the matter pertains to the years 1978-81 when the applicant was an officer of the U.P. Civil Service. It is further stated therein that the impugned punishment ofder will be deemed to be an order of the Governor under Artical 166(I) of the constitution of India. It is also stated that as per Govt.of India Ministry of Home Affairs letter No. 32/56/56-A15(2) dated 11/1/87, no appeal lies to the Govt. Of India under All India Service (Discipline& Appeal) Rules, 1969 in respect of matters pertaining to the period prior to the officer's appointment to the I.A.S./I.P.S. It is clear from the above that the matter pertains to the period when the applicant had not been appointed to the I.A.S. Further, the orders which have culminated in passing of the impugned order dated 15.3.1990 were passed by him when he was an officer of the U.P. Civil Service (Executive Branch) and was serving in connection with the affairs of State of U.P. The impugned order has been passed by the Government of U.P. Though, the State of U.P. has been arrayed as respondent No.3 in this application, the Central Administrative Tribunal has no jurisdiction over this respondent. The main relief prayed for also relates to the queshing of the order which has been

Contd....4/-

passed by the Government of U.P. For all there reasons, there is no matter of doubt that the Central Administrative Tribunal doesnot have jurisdiction to adjudicate on the validity of the impugned order dated 15.3.1990.

6. As regard the prayer for interim relief, it is true that the prayer as formulated by the applicant relates to non consideration of the impugned order in the matter of applicant's confirmation in the I.A.S. Such a formulation however, would not give jurisdiction to the Central Administrative Tribunal in this matter at this stage. Unless, the impugned order is set aside by the Competent Authories / forum, the Central Administrative Tribunal cannot, in directly the grant, the main relief as part of the Interim relief. If the Central Administrative Tribunal doesnot have jurisdiction in the matter of main relief, if cannot acquire jurisdiction in the matter of interim relief connected there with, directly or indirectly. If, the applicant is aggrieved in the matter of his confirmation in the I.A.S. etc., he would be free to approach Central Administrative Tribunal at the appropriate time.

In view of the above discussion the application is disposed off as not maintainable for want of jurisdiction.

Jud. Member

Admn. Member 30/5/90

30/5/90

Lucknow,
Dated the 30th May, 1990.

Central Admin...
Circuit
Date of F... 15/5/90
Date of R...

Deputy Registrar...

Application under Section 19 of the Administrative Tri-bunals Act, 1985.

OA 165/90(L)

Title of the Case : Quashment of impugned order awarding censure entry and with-holding integrity certificate for 1978-81.

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2.	~~Impugned~~ order dated March 15, 1990	
3.	Copy of State of U.P. Radiogram dated 17.3.89 promoting applicant to higher scale post in the scale of Rs.2300-2700. - Annexure A-1	17
4.	Copy of Govt. of India Notification dated Sept. 7, 1989 appointing applicant to the IAS - Annexure A-2	18
5.	Copy of U.P. Govt. Notification No. 4808/II (2)-23/2(2)(3) 1976 dated 1.8.1978. - Annexure A-3	19
6.	Copy of D.O. letter dated 19.4.85 from Commissioner, Allahabad with a copy of Annexure A-4. - Annexure A-4	20-23
7.	Copy of the explanation furnished by applicant on 8.5.85. Annexure A-5	24-28
8.	Copy of D.O. letter dated 28.5.85 from the Commissioner, Allahabad - Annexure A-6	29
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10.	Copy of Judgment dated 10.4.87 of Lucknow Bench of Allahabad High Court - Annexure A-8	36-37
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12.	Copy of applicant's explanation dated Sep. 1989. - Annexure A-10	40
13.	Copy of U.P. Govt. O.M. dated March 19, 1990 awarding censure entry and with-holding integrity certificate for 1978-81. - Annexure A-11	15-16
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Noted for 17.5.90
Requesting Advocate

f.T. Sd/ 15/5/90

Signature of the Applicant.

For use in Tribunal's Office
Date of filing
or
Date of receipt by post
Registration No.

Signature
for Registrar.

Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing 15/5/90
Date of Receipt by Post

Deputy Registrar
Dy...

In the Central Administrative Tribunal, Circuit Bench,

Lucknow.

Criminal Application No. 165 of 1990 (L)

Shri Anil Kumar Singh Solanki, IAS,
aged about 51 years, son of Sri
Amri Singh, presently working as
Additional Director of Industries,
U.P., Kanpur, residing at 16/3(2),
Civil Lines, Kanpur ..... Applicant

: Versus :

1. The Union of India
Through The Secretary to
Government of India,
Ministry of Personnel,
Public Grievance and Pensions,
Department & Training,
New Delhi.

2. The Union Public Service
Commission, New Delhi
through its Secretary.

3. The State of U.P. through
The Secretary to the Govt.
of U.P., Appointment Deptt.,
Civil Secretariat, Lucknow ..... Respondents.

(1) Particulars of the orders
against which Application
is made :

The Govt. of U.P. Office Memorandum
No. 6246/II(2)-22(20)/74 dated March 15, 1990 by

which the Applicant has been awarded censure entry and his integrity for the years 1978-81 has been withheld.

(2) Jurisdiction of the Tribunal

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

(3) Limitation

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

(4) Facts of the Case

4.1. That the applicant was appointed to the U.P. Civil Service (Executive Branch) on 20.10.72 on the basis of the result of Written Examination and Interview held by the U.P. Public Service Commission.

4.2. That by virtue of being an ex-army officer the State Govt. allotted the year 1964 as the year of allotment to the applicant for purposes of determination of his seniority in the U.P. Civil Service (Executive Branch) (hereinafter referred to as Civil Service).

4.3. That the work and conduct of the applicant having been found upto the mark on the basis of successful completion of probation period of two years, he was confirmed inthe Civil Service with effect from 20.10.74.

4.4. That on the basis of the criteria of seniority subject to the rejection of unfit, the applicant was promoted in the senior scale of the Civil Service with

effect from 1.1.76.

4.5. That there are some posts in the Civil Service in the higher scale known as Special Grade. Promotions on the said Special Grade posts are made from amongst Senior Scale Officers on the criteria of strict merit. The work and conduct of the applicant having been adjudged by the State Govt. to be excellent, he was promoted to the Special Grade post in December 1979 in the scale of Rs. 1840-2400 which has since been revised to Rs.4100-5300. He was also confirmed on the said post from 24.12.1986.

4.6. That the performance of the applicant having been found quite upto the mark, he was confirmed in Senior Scale of Civil Service with effect from 30.1.84.

4.7. That above the Special Grade posts there are some posts in the higher scale of Rs.2300-2700 which has since been revised to Rs. 4500-5700. Appointments on the higher scale posts are made by promotion from amongst the Special Grade officersof U.P. Civil Service on the criteria of strict merit. The service-record of the applicant has throughout remained of outstanding nature on the basis of which he was selected and appointed on the said higher scale post vide Govt. of U.P., Appointment Department Radiogram No. 1670/II-2/1989 dated 17.3.1989, a copy of which is being filed as Annexure A-1.

4.8. That some posts in the I.A.S. Cadre of U.P.

are reserved for being filled up on the basis of strict merit from amongst the U.P. Civil Service Officers. The Selection Committee constituted under rule 3 of the I.A.S. (Appointment by Promotion) Regulations 1955, which met in 1988, adjudged the applicant suitable for inclusion in the select list of the I.A.S. The applicant was appointed to the I.A.S. and was placed on probation for a period of one year with effect from 7.9.89 in Govt. of India, Ministry of Personnel, Public Grievances and Pensions' Notification No. F.14015/3/89-AIS(I) dated September 7, 1989, a copy of which is being filed as Annexure A-2.

4.9. That the applicant's lien in the Civil Service will continue during the period he will remain on probation on the post in IAS Cadre of UP. There are some posts in the scale of Rs.5900-200-6700 in the U.P. Civil Service. Promotions on these posts are made from amongst the U.P. Civil Service Officers in the higher scale of Rs.4500-5700 as have worked in this scale for one year on the basis of seniority subject to the rejection of the unfit. In case an officer junior to the petitioner in the U.P. Civil Service is appointed in the said higher scale post in the scale of Rs.5900-6700 before the applicant's confirmation in the IAS, he shall become entitled to get the benefit of this cale and he will have the right to have his pay fixed in the I.A.S. on the basis of his pay in the U.P. Civil Service in the scale of Rs.5900-6700.

4.10. That in August 1978 the Govt. of U.P. issued Notification No. 4804/II(2)-23/2(3)1978 dated August 1, 1978 appointing the applicant on the post ofAdditional District Magistrate (Executive), Varanasi and Collector Varanasi. According to the said Govt. Notification the applicant was conferred with the powers of the District Magistrate under sub-Section (2) of Section 20 of the Code of Criminal Procedure, 1974 as well as the powers of Collector under the Land Revenue Act, 1901 and to exercise all the powers of the Collector for the whole of District Varanasi. A copy of the said Govt. Notification dated August 1, 1978 is being filed as Annexure A-3.

4.11. That during the period from 1978 to 1981 while the applicant remained posted as Additional District Magistrate (Executive), Varanasi, he passed judicial orders in three cases in respect of release of coal by virtue of being the Collector of Varanasi District in terms of the said Government Notification dated August 1, 1978 (Annexure A-3) read with Section 2(a)(ii) of the Essential Commodities Act, 1955. Those judicial orders were not challenged in Appeal or Revision and became final.

4.12. That five years after the said judicial orders passed by the applicant in bona-fide exercise of his powers under Section 3 of the Essential CommoditiesAct, 1955 as Collector of District Varanasi, he received an Appendix with D.O. letter dated 19.4.85 from the then Commissioner, Allahabad Division. In that D.O. letter the applicant had been asked to furnish his explanation regarding the irregularities mentioned in the said

Appendix, which were alleged to have been committed by him in passing the said judicial orders. A copy of the said D.O. letter and the Appendix received therewith are being filed as Annexure Nos. A-4.

4.13. That although the Government in Appointment Department or any other executive authority of Government was not at all competent to criticise or to find fault with the orders passed by the applicant in judicial capacity as only the Appellate or Revisional authority are competent to make adverse comments on the said judicial orders but even then like an obedient Government servant he furnished his explanation dated 8.5.85 to the Commissioner, Allahabad District. It was stated in the said appendix that the orders passed by the applicant was beyond his jurisdiction. The applicant had explain--ed in his said explanation that he was fully competent to pass orders in the said three cases by virtue of the powers vested in him as Collector of Varanasi District in terms of Govt. of U.P. Notification dated August 1, 1978 (Annexure A-4) under Section -3 read with Section 2(a)(1a) of the Essential Commodities Act, 1955 and there was no legal infirmity whatsoever in those judicial orders. A copy of the said explanation dated 8.5.1985 is being filed as Annexure A-5.

4.14. That the applicant was sure that his explanation would have been found satisfactory and the matter must have been closed. The applicant was surprised to receive a copy of the same Appendix with D.O. letter No. 85/PA dated 28.5.1988 from Sri Ravindra Gupta, the then Commissioner, Allahabad Divisi on, calling for his explanation in respect of the alleged

irregularities mentioned in the Appendix. A copy of the said D.O. letter ~~with the Appendix etc~~ being filed as Annexure A-6.

4.15(i). That the applicant sent a detailed explanation dated 29.9.1989 to the Secretary to Government in Appointment Department explaining that he had clarified in his previous explanation addressed to Sri A.P. Singh the then Commissioner, Allahabad ~~Zon~~ Division, that he had passed orders in the three cases in bonafide exercise of his powers vested in him as Collector under the provisions of the Essential Commodities Act, 1955 and on that basis the matter must have been closed. It has also been stated in the said explanation that in terms of the Notification issued by Govt. appointing him on the post of Additional District Magistrate (Executive), Varanasi he had been given all the powers of Collector for the whole of Varanasi District and to deal with all cases, including under the U.P. Land Revenue Act and in exercise of those powers read with Section 2(iia) of the Essential Commodities Act, 1955. The applicant had stated in his said explanation that by virtue of the protection clause contained in Section 15(1) of the said Essential Commodities Act no action whatsoever could be taken against him. It was also pointed out that in a similar case of Sri Mohd. Iqbal Azmi, the Hon'ble Supreme Court of India in Civil Appeal No. 3338 of 1988 arising out SLP (Civil) No. 5202 of 1987, in their order dated 22.9.1988 have held that no action could be taken against Sri Azmi in respect of the judicial orders passed by him as Assistant Consolidation Officer in view of the protection provided in Section 49-A of the U.P. Consolidation of Holdings Act, 1955.

Similar protection is provided in Section 15(1) of the Essential Commodities Act, 1955 as is provided in Section 49-A of the U.P. Consolidation of Holdings Act, 1953. Section 15(2) of the Essential Commodities Act, 1955 and Section 49-A of the U.P. Consolidation of Holdings Act, 1953 are reproduced below :

(a) Section 15(2) of Essential Commodites Act, 1955 :

> "15(2) Protection against action under Act :
>
> (1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under Section 3."

(b) Section 49-A of the U.P. Consolidation of Holdings Act, 1953 :

> "49-A. Protection of action taken under this Act or rules made thereunder - No suit, proceeding or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or rules made there--under."

4.15(ii). The Hon'ble Supreme Court of India vide their orders dated 22nd September, 1988 in Civil Appeal No. 3338 of 1988 arising out of SLP in Appeal No. 5202 of 1987 have set aside the judgment and order dated April 10, 1987 of the High Court and restored the orders dated 28th July, 1986 of the Tribunal and extended the time by three months from the date of their order for compliance of the Tribunal's orders. The effect of the said orders dated 22.9.88 of the Hon'ble Supreme Court of India is that it has become a law binding on all Courts and Tribunals in India of India and under Article 141 of the Constitution, by virtue of the protection

provided in the various Acts of Legislatures, no action can be taken against the officers who pass orders in exercise of their powers under the relevant Acts of Legislature nor any other authority other than the appellate or Revisional authority has the right to set in judgment over such orders.

The applicant alongwith the said explanation dated September, 1989 also enclosed copies of the judgment and order dated 28th ~~June~~ July, 1985 of the Hon'ble Tribunal and orders dated 10th April, 1987 of Lucknow Bench of Allahabad High Court and also a copy of the said Supreme Court order dated 22nd September, 1988. The applicant prayed in his said explanation that in view of the submissions made therein, the matter may be closed. Copies of the above-mentioned three judgments and orders as well as the said application dated September, 1989 are being filed as Annexure A-7, A-8, A-9 and A-10 respec--tively.

4.16. That in spite of the fact that the applicant in his representation/explanation dated ~~March 19,~~ September, 1989 had made a request for closing the matter on the basis of legal pleas adduced by him in foregoing paragraphs but O.P. No.1 without examining the pros and cons of the matter in their correct perspective and instead of closing the matter, the applicant was awarded a highly damaging censure entry and his integrity certificate was also withheld for the years 1978-1981 without any basis whatsoever vide the Govt. of U.P. O.M. dated 15.3.1990, a copy of which is being filed as Annexure A-11.

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4.17. That the matter pertained to the years 1978-1981 when the applicant was an officer of the U.P. Civil Service. The impugned punishment order will be deemed to ~~have been~~ be the order of the Governor under Article 166(1) of the Constitution of India. Under proviso to Rule 56 of the Civil Service Classification, Control and Appeal Rules, read with sub-rule (2) thereof the punished Government servant has the option to prefer a representation against imposition of ~~punish-ment~~ other penalties under Rule 49 of the said Rules to the authority of any next higher to the punishing authority. Since there is no higher authority than the Governor in the State, no representation lies against the impugned censure entry. It is also provided in Govt. of India, Ministry of Home Affairs, letter No. 32/56/56-AIS(2) dated 11th January, 1987 that no appeal lies to the Govt. of India under the All India Services Discipline and Appeal Rules, 1969 in respect of matters pertaining to a period prior to officers' appointment to the IAS/IPS. The relevant extracts of the said letter of the Govt. of India are printed at page 528 of Sri K.N. Goyal's Administrative Tribunals Act, 1985, 1986 Edition.

4.18. That the facts mentioned in the foregoing paragraphs clearly show that the impugned censure entry is wholly illegal and null and void in the eye of law and the same deserves to be quashed. In case the impugned censure entry is not quashed, the applicant is liable to be retired compulsorily and he is also likely to be reverted in the U.P. Civil Service from I.A.S. and thus he will suffer

irreparable loss, which cannot be compensated in any other manner.

5. Grounds for relief with legal provisions :

(i) Because the impugned order of the O.P. No.1 is wholly illegal and nullity in the eye of law besides being beyond jurisdiction, as the applicant had decided the cases strictly in accordance with law and under the provisions of Essential Commodites Act, 1955 and no adverse comments whatsoever have been made by any higher Court with regard to the cases in question as the applicant being legally bound to decide, had decided these cases in benefide exercise of his powers under the said Act and the State Govt. or the Vigilance Authorities had no jurisdiction to sit in judgment over the said perfectly legal orders passed by the applicant.

(ii) Because the impugned censure entry is null and void having been awarded on the basis of the judicial orders passed by the applicant under Section 3(2)(d) of the Essential Commodities Act, 1955, in bonafide exercise of the powers under the said Act.

(iii) Because Section 15(1) of the Essential Commodities Act, 1955 provides that no suit, prosecution or other legal proceeding can lie against any person for any thing which is in good faith done or intended to be done in pursuance of any order made under Section-3.

(iv) Because the action of investigating agencies as well as of the State Govt. in Appointment Department which have culminated in the award of the impugned censure

entry to the applicant have rendered themselves liable to be punished under Section 12 of the Contempt of Court Act for committing contempt of the Court of Additional Collector, Varanasi, of which the applicant was the Presiding Officer in whom the power of Collector vested under the Govt. of U.P. Notification dated August 1, 1978, read with Section 2(aii) of the Essential Commodities Act, 1955.

(v) Because the impugned order is null and void for non-compliance of the requirements prescribed in Rule 10 of the All India Services (Discipline and Appeal) Rules, 1964 applicable to the applicant

6. Details of Remedies exhausted :

In view of the facts stated in para. 4.17 above it is not necessary to exhaust the departmental remedies in this case as the impugned order would be deemed to be the order of the Governor under Article 166 of the Constitution of India and there is no higher authority in the State before whom a representation can be made against the impugned order.

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

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

8. Relief (s) sought :

That the Hon'ble Tribunal be pleased to declare null and void and quash the impugned censure

entry at Annexure A-11 as the same is wholly illegal and beyond jurisdiction.

9. Interim relief prayed for :

The Respondents be directed not to take into consideration the impugned censure entry for purposes of applicant's confirmation in the IAS and for any service matter detriment to the interest of the applicant during the pendency of this appli--cation, otherwise the applicant shall suffer irreparable loss which cannot be compensated in ~~xxxxxx~~ any other manner.

10. In the event of application being sent by ~~xxxix~~ registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so he shall attach a Self-addressed card or inland letter at which intimation regarding the date of hearing could be sent to him. The application is being submitted personally.

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

1. Number of Indian Postal orders 8 02 414185
2. Nameof Issuing Post Office High Court P.O. Lucknow
3. Date of Issue of postal orders 11.5.90
4. Post office at which payable. Allahabad

12. List of enclosures :

Annexure Nos. A-1 to A-11 as shown in the Index and Vakalatnama and Postal Order.

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Verification

I, Anil Kumar Singh Solanki, aged about 51 years, son of Sri Amrit Singh, presently working as Additional Director of Industries, U.P., Kanpur, residing at 16/5(2), Civil Lines, Kanpur, do hereby verify that the contents of paras. 1 to 12 above are true to my personal knowledge and belief and that I have not suppressed any material fact.

Lucknow,
Dated April , 1990.

Signature of Applicant.

-.-.-.-.-.-.-.-

Through,

Radhika Raman
Advocate, High Court and
Services Tribunals,
C - 4 Sector - A - 1,
Mahanagar, LUCKNOW.

गोपनीय (15)

Annexure A-11

उत्तर प्रदेश शासन
नियुक्ति 121 अनुभाग
संख्या-6246/दो-121-82120 1/74.
लखनऊ:: दिनांक:: मार्च 15, 1990.

कार्यालय-ज्ञाप

अधोहस्ताक्षरी को यह कहने की गवेश्या की गई है कि श्री अनिल कुमार सिंह सोलंकी, जब वर्ष 1978-81 में अपर जिलाधिकारी (प्रशासन), वाराणसी के पद पर तैनात थे, उनके द्वारा वाद संख्या-80/79 रेट्ट बनाम मधुसूदन पात्रों आदि धारा 3/7, आवश्यक वस्तु अधिनियम के विलेखनाधीन मामले में राजकोष तथा जनहित की उपेक्षा करके प्रतिपक्ष के हित में अनाधिकार आदेश पारित किया । उक्त कोर्ट केस में सत्र न्यायाधीश द्वारा केस को रिमाण्ड करते हुए मधुसूदन पात्रों को पुनः नोटिस देकर जिलाधिकारी को पुनः सुनवाई करने हेतु आदेश पारित किया । इसी क्रम में श्री सोलंकी ने जिलाधिकारी के आदेश से आवश्यक वस्तु अधिनियम की धारा-6(अ) के अन्तर्गत मुकदमे की पुनः सुनवाई की । परन्तु पात्रों पर सत्र न्यायाधीश के निर्देशानुसार नोटिस तामील कराकर रफ्तीकरण प्राप्त नहीं किया गया । इसी के साथ अधिगृहित 703 मी0 ब्लैक बोकला को श्री सूरज प्रसाद को बगैर समुचित आधार पर अधिकृत प्रतिनिधि मानते हुए उनके पक्ष में मुक्त करने का आदेश पारित किया जिसके लिये वह सक्षम नहीं थे । इसके अतिरिक्त इस मुकदमे में अपर्याप्त साक्ष्य एवं सरासर विरोधी अभिलेखों के आधार पर निर्णय दे दिया गया । इसके अतिरिक्त वाद संख्या-21/81 सरकार बनाम अमंता कोल एजेन्सी थाना मुगलसराय, वाद संख्या-7/81 सरकार बनाम गणेश कोल डिपो, थाना रामनगर एवं वाद संख्या-22/81 सरकार बनाम गायत्री कोल डिपो थाना मुगल सराय में श्री सोलंकी ने अपने क्षेत्राधिकार से बाहर जाकर आवश्यक वस्तु अधिनियम की धारा-6(अ) के अन्तर्गत अधिगृहीत कोयला सम्बन्धित पार्टियों को अवमुक्त किया जिसके लिये श्री सोलंकी अधिकृत एवं सक्षम नहीं थे । इस प्रकार श्री सोलंकी द्वारा अपने अधिकार क्षेत्र के बाहर जाकर त्रुटिपूर्ण आदेश दिये गये । शासन ने इन अनियमितताओं के लिये श्री सोलंकी को निन्दा प्रविष्टि देने का निर्णय किया है ।

अतएव श्री सोलंकी, सम्प्रति अपर निदेशक, उद्योग उत्तर प्रदेश कानपुर को

------2/-

Attested
Registering
Advocate

17

Annexure A-1

COPY OF R/G NO. 1670/II-(2)/1989 Dated 17.3.1989 received from Chief Secy. to Govt. of UP Lucknow addressed to all Commissioner's of State.

IN

FOLLOWING OFFICERS WORKING ~~IN~~ THE SPECIAL GRADE OF PCS(EX BRANCH) HAVE BEEN PROMOTED IN AN OFFICIATING CAPACITY TO THE HIGHER SCALE OF P.C.S.(EX.BRANCH)(Rs.2300-2700) WITH EFFECT FROM THE DATE OF TAKING OVER CHARGE OF THEIR POSTS AS SHOWN AGAINST THEIR NAMES-----

SARVSHRI

1.	BHAGAT SINGH VERMA VICE CHAIRMAN DEVELOPMENT AUTHORITY MDD. ...	VICE CHAIRMAN DEV. AUTHORITY MDD.
2.	BHAIRON PRASAD MANAGING DIRECTOR AND MANDAL VIKAS NIGAM ALLAHABAD. ...	MANAGING DIRECTOR ALD MANDAL VIKAS NIGAM ALD
3.	ANIL KUMAR SINGH SOLANKI MUKHYA NAGAR ADHIKARI NAGAR MAHAPALIKA MEERUT AND VICE CHAIRMAN DEV. AUTHORITY?MEERUT.	MUKHYA NAGAR ADHIKARI NAGAR MAHAPALIKA MRT AND VC DEV. AUTHORITY MEERUT.
4.	DHARAM PAL SINGH VICE CHAIRMAN ALIGARH DEV. AUTHORITY ALIGARH ...	VICE CHAIRMAN ALIGHARH DEVELOPMENT AUTHORITY ALIGARH.
5.	DEVENDRA NATH RAI SECY HIGHER EDUCATION SERVICE COMMISSION ALLAHABAD. ...	SECY HIGHER EDUCATION SERVICE COMMISSION ALLAHABAD.
6.	GIRISH CHANDRA PATHAK REGIONAL FOOD CONTROLLER KANPUR ...	RFC KANPUR
7.	JAMUNA PRASAD VISHWAKARMA JT. DIR OF INDUSTT VARANASI ...	JT.DIR. INDSTT.VARANASI

.....

OFFICERS CONCERNED BE INFORMED and directed to take over CHARGE ACCORDINGLY(.)SIGNAL COMPLAINCE.

TC
Adv.

(18)
Annexure A-2

(TO BE PUBLISHED IN THE GAZETTE OF INDIA IN PART I SECTION 2)

No.F.14015/3/89-AIS(I)
Government of India
Ministry of Personnel, P.G. & Pensions
(DEPARTMENT OF PERSONNEL AND TRAINING)

.....

New Delhi, the / Sept.,89

NOTIFICATION

In exercise of the powers conferred by sub-rule(1) of rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 read with sub-regulation (1) of regulation 9 of the Indian Administrative Service (Appointment by promotion) Regulations, 1955, the President is pleased to appoint S/Shri Gulbeer Singh, Romesh Kumar Sharma, Anil Kumar Singh Solanki, Raj Kumar-I, Ranbir Singh, Rajendra Kumar Dube and Dharam Pal Singh, members of the State Civil Service of Uttar Pradesh to the Indian Administrative Service on probation and to allocate them to the cadre of Uttar Pradesh under sub-rule (1) of rule 5 of the Indian Administrative Service (Cadre) Rules, 1954.

2. The appointment of the above mentioned officers to the Indian Administrative Service is, however, subject to the decision of the CAT, Allahabad Bench in petition No.933/88 filed by Shri A.C. Pandey and others Vs. Union of India and others.

(M.K. TREHAN)
DESK OFFICER.

To

The Manager,
Government of India Press,
Faridabad (Haryana)

No.F.14015/3/89-AIS.I Dated / Sept.,89

A copy forwarded for information to the following:-

1. The Chief Secretary to the Govt. of Uttar Pradesh, Lucknow, with seven spare copies for onward transmission to the officer concerned.
2. Accountant General, Govt. of Uttar Pradesh, Lucknow.
3. Secretary, UPSC., New Delhi.
4. E.O. to the Govt. of India, New Delhi.

(M.K. TREHAN)
DESK OFFICER.

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6. 10 spare copies.

T.C. Rajendra Advocate

4 (19)

Annexure-A-3

(A26)

उत्तर प्रदेश शासन
नियुक्ति अनुभाग-2
संख्या-4838/दो-(2)-23/2(3) ए/1978
लखनऊ : दिनांक 1 अगस्त, 1978

नियुक्ति

श्री अनिलकुमार सिंह सोलंकी, अतिरिक्त जिलाधिकारी (प्रशासन), अलीगढ़, को शासनादेश संख्या-दिनांक 29 जून 1978 (पूर्वाह्न) के :-

(क) उत्तर प्रदेश प्रोविंशियल प्रोसिक्यूशन, 1978/सेक्ट नं० 2, 1978/सेक्शन 23 की उपधारा (2) के अधीन, उन्हें शासनादेश लिखे जाने की अतिरिक्त जिला मजिस्ट्रेट (प्रशासन) नियुक्त किया जाता है और उक्त तारीख से जिस उनकी अधिकार सीमा में होगा और उनको उस क्षेत्र के अधीन और लिये अन्य सभी सहायक जिला मजिस्ट्रेट के समस्त अधिकार प्राप्त होंगे और

(ख) दण्ड प्रक्रिया संहिता, 1973/1974 के सेक्शन 3, 1973/1974 की धारा 1-क की उपधारा (1) के अधीन उन्हें उक्त जिले में अतिरिक्त कलेक्टर नियुक्त किया जाता है और उक्त धारा की उपधारा (3) के अधीन उन्हें सभी या कुछ मामलों में कलेक्टर के समस्त अधिकारों का उपयोग करने तथा कलेक्टर के समस्त कार्य करने के अधिकार दिये जाते हैं।

आज्ञा से,

दिनेश कुमार भट्टाचार्य
मुख्य सचिव

संख्या-4838(1) ए/दो-(2)-23/2(3) ए/1978

प्रतिलिपि निम्नलिखित को सूचनार्थ प्रेषित :-

(1) अपर महालेखाकार, उत्तर प्रदेश, 10 यू० 2/8 अनुभाग, इलाहाबाद को उत्तर प्रदेश राजपत्र में अंकित वेतन पर प्रभावकर्ष।

(2) महालेखाकार, उत्तर प्रदेश, 10 यू० 2/8 अनुभाग, इलाहाबाद को उक्त पत्र के क्रम में अतिरिक्त जिलाधिकारी (प्रशासन), अलीगढ़, के पद पर श्री अनिल कुमार सिंह सोलंकी, को प्रशासित सिविल (प्रशासकीय खाता) लेखा से मेसर्स वेतन-भाग में वेतन के अतिरिक्त रुपया 100/- (रुपया एक सौ) प्रतिमास सिविल वेतन देय होगा।

(3) जिलाधिकारी, अलीगढ़ /समाहिता अधिकारी को सूचनार्थ अतिरिक्त प्रति संख्या
(4) कोषाध्यक्ष, अलीगढ़ मण्डल, अलीगढ़।
(5) सचिव, राजस्व परिषद, उत्तर प्रदेश, लखनऊ।
(6) गार्ड फाइल अनुभाग-2 (अतिरिक्त सिट कॉपी)
(7) गार्ड अनुभाग-1 को उक्त सूचनार्थ हेतु।

आज्ञा से,

Rika Singh
(रीता सिंहा)
अवर सचिव

T.C.
Mehrotra
Adv.

(20)

A-27

D.O. No. 51/P.A.
गोपनीय

COMMISSIONER

ALLAHABAD DIVISION
Allahabad

Dated 19.4.1985

शासन ने अपर जिलाधिकारी (प्रशासन) वाराणसी के पद पर तैनाती की अवधि में आपके विरुद्ध संलग्न परिशिष्ट में उल्लिखित अनियमितताओं के बारे में आपका स्पष्टीकरण प्राप्त करके भेजने का निर्देश दिया है ।

कृपया परिशिष्ट में अंकित अनियमितताओं के बारे में अपना स्पष्टीकरण मेरे पास यथाशीघ्र भेज दें, ताकि शासन को भेजा जा सके ।

भवदीय,

(एपी०सिंह)

श्री एके०सिंह सोलंकी,
क्षेत्रीय खाद्य नियन्त्रक,
कानपुर ।

"परिशिष्ट"

(21) A28

श्री अनिल कुमार सिंह सोलंकी, पी०सी०एस०, के अपर जिलाधिकारी (प्रशासन) नगर), वाराणसी के पद पर तैनाती की अवधि में शासन के संज्ञान में यह तथ्य प्रकाश में लाये गये कि तत्कालीन अतिरिक्त जिलाधिकारी (आपूर्ति) श्री देव शरण सिंह यादव, के निर्देशन पर तत्कालीन क्षेत्रीय खाद्य अधिकारी श्री आर०के० द्विवेदी ने शिवपुर रेलवे स्टेशन पर चोर बाजारी से क्रय करके राजपुरा, पटियाला (पंजाब) भेजने के लिए रेलवे वैगनों को इण्डेन्ट करेके 703 मै०ट० स्टीम कोयला संगृहीत किया गया था । श्री सूरज प्रकाश, प्रतिनिधि श्री मधुसूदन पात्रों की उपस्थिति में दिनांक 21-12-1979 को अधागृहीत करके धारा 3/7 आ०व०अ० के अन्तर्गत थाना जी०, आर०पी० कैण्ट, वाराणसी में अपराध पूंजीकृत कराया था । धारा 6 के अन्तर्गत उक्त कोयले के जब्ती की कार्यवाही करने के लिए दिनांक 24-12-1979 को रिपोर्ट भेजा था । उसके आधार पर श्री पात्रों के प्रतिनिधि श्री सूरज प्रकाश के स्पष्टीकरण की समीक्षा करके श्री श्रीवास्तव, तत्कालीन अतिरिक्त जिलाधिकारी (नगर) ने उक्त कोयले को जब्त करने का आदेश दिनांक 28-1-1980 को दिया था । धारा 6 सी के अन्तर्गत अपील करने पर सत्र न्यायाधीश ने दिनांक 12-3-1980 को निर्णय दिया कि सूरज प्रकाश का श्री मधु सूदन पात्रों का अधिकृत प्रतिनिधि प्रमाणित नहीं था अत: ये पात्रों का कोयला श्री सूरज प्रकाश के स्पष्टीकरण के आधार पर अधिगृहीत किया जाना न्यायोचित नहीं था । अत: सत्र न्यायाधीश ने केस को रिमांड करके श्री पात्रों पर पुन: नोटिस देकर जिलाधिकारी द्वारा स्वयं या श्री श्रीवास्तव के अतिरिक्त अन्य किसी अधिकारी द्वारा पुन: सुनाई का आदेश पारित किया था । फलस्वरूप श्री सोलंकी ने जिलाधिकारी के आदेश से धारा 6 अ के अन्तर्गत मु०सं०89/79 स्टेट बनाम मधुसूदन पात्रों की पुन: सुनवाई की । उन्होंने श्री पात्रों पर सत्र न्यायधीश के निर्देशानुसार नोटिस तामील कराकर स्पष्टीकरण प्राप्त नहीं किया । यदि श्री पात्रों द्वारा श्री सूरज प्रकाश को अधिकृत प्रतिनिधि नियुक्त करने हेतु स्टेशन मास्टर शिवपुर रेलवे स्टेशन के मात्रा सम्बोधित लेटर आफ अथारिटी दिनांक 26-11-79 के आधार पर श्री सूरज प्रकाश को श्री पात्रों का अधिकृत प्रतिनिधि मान लिया । यद्यपि उक्त लेटर आफ अथारिटी रेलवे से कोयला बुक कराने के लिए कोयला पकड़े जाने के पूर्व स्टेशन मास्टर के नाम दिया गया था और धारा 6 सी के अन्तर्गत सत्र न्यायालय में लंबित सुनाई के समय भी उपलब्ध थी । श्री सूरज प्रकाश ने बीना कोल्लरी से शिवपुर रेलवे स्टेशन को, मेसर्स संभल गगरौला ट्रांसपोर्ट एजेन्सी, चंदौसी द्वारा दिनांक 4-12-79 से 15-12-79 की अवधि में मे०आर०डी०ब्रदर्स पठानकोट का

...2/-

TC
Ram Adv.

(22)
A29

599-895 मै0टन कोयला ढुलाई किये जाने की रसीदें दाखिल कराई था, जिसे उक्त ट्रांसपोर्ट कम्पनी के मालिक ने अपना फर्म द्वारा ढुलाई करके, रसीदें का दिया जाना जाँच से समय प्रमाणित नहीं किया है, जब कि कोइलरा से दिनांक 6-12-79 से 16-12-79 की अवधि में 976-110 मै0टन कोयला का निकासी का प्रमाण पत्र श्री मदन मोहन दूबे द्वारा बीना कोइलरी से निकासी कराये जाने तथा 6-12-79 से कोइलरी से कोयला की निकासी कराये जाने के गेट पास भी दाखिलकराये गये थे, किन्तु उक्त अवधि में उक्त कोयले का राम नगर, नगरपालिका की चुंगी बिक्री से ब्रिज से होकर वाराणसी नगर महापालिका की सीमा के अन्दर ट्रांजिट पास से या चुंगी कराकर शिवपुर रेलवे स्टेशन को आना प्रमाणित नहीं था । श्री दर्शन महाजन नाम तथाकथित एक पार्टनर मैसर्स आर0डी0 ब्रदर्स पठानकोट द्वारा श्री सूरज प्रकाश एवं श्री पात्रों को ब्रोकोल हैण्डलिंग एजेन्ट/ट्रांसपोर्ट एजेन्ट नियुक्त किये जाने का एक अप्रमाणित अग्रिमेन्ट भी दाखिल कराया गया था, जबकि पार्टनरशिप डीडी की प्रतिलिपि दाखिल नहीं था, जिससे यह प्रमाणित होता कि श्री दर्शन महाजन उक्त फर्म के पार्टनर थे । उक्त प्रकार के परस्पर विरोधी अप्रमाणित अभिलेखों तथा सक्षम न्यायाधीश के निर्देशों के अनुसार श्री पात्रों को नोटिस देकर उनका स्पष्टीकरण प्राप्त किये बिना श्री अनिल कुमार सिंह सोलंकी ने 703 मै0टन कोयला को मुक्त करने का आदेश दिनांक 24-5-1980 को पारित किया, जिसके लिये वह अधिकृत नहीं थे। उक्त निर्णय पारित करने से पूर्व श्री सोलंकी ने कोयला आवंटन तथा डिलेवरी आर्डर को प्रतिपक्ष से दाखिल नहीं कराया, जिससे स्पष्टताया प्रमाणित था कि सेन्ट्रल कोल फील्ड राबी ने मैसर्स ने मैसर्स आर0डी0 ब्रदर्स कथोवा (जम्मू एवं काश्मीर) को कोयला आंवटित किया था और डिलेवरी आर्डर में ही श्री बी0एस0 गोवर, हजारी बाग को उक्त फर्म का कोल हैंडलिंग एजेन्ट नियुक्त किया था, जिन्होंने एक हजार मै0टन कोयले का मूल्य भी बैंक ड्राफ्ट द्वारा बीना कोयलरी में जमा करके, पत्र द्वारा अपनी तरफ से सर्वश्री एम0के0मिश्रा एवं सिद्ध नाथ सिंह को अपना प्रतिनिधि बीना कोयलरी से कोयला की डिलेवरी लेने के लिए उनके हस्ताक्षरों को प्रमाणित करके नियुक्त किया था। केवल कोयला आंवटन तथा डिलेवरी आर्डर से पूर्णतया प्रमाणित था कि श्री पात्रों एवं श्री सूरज प्रकाश का कोई सम्बन्ध मैसर्स आर0डी0 ब्रदर्स से कोयला से नहीं था । यह भी प्रमाणित नहीं था कि श्री आर0डी0 ब्रदर्स के कोयला जो दिनांक 4-12-79 से आना कहा गया, वस्तुतः 6-12-79 से

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16-12-79 को अवाध में ही कोयलरी से निकाल दिया गया था । यह कोयला हो रेलवे स्टेशन शिवपुर आया था । यदि आया था तो सूरज प्रकाश ने दिनांक 31-12-79 तक स्टेशनमास्टर शिवपुर के वैगनों का इण्डेन्ट नहीं किया था अपितु राजपुरा पाटियाला के लिए वैगन इण्डेन्ट किये गये थे । उक्त तथ्यों के परिप्रेक्ष्य में श्री सोलंकी का आचरण दोषपूर्ण पाया गया है ।

उक्त तथ्यों से यह स्पष्ट होता है कि धारा 3/7 आवश्यक वस्तु आधानियम के अन्तर्गत विवेचनाधीन पंजीकृत मुकदमों में अभियुक्तों द्वारा अपराध न किये जाने का मन्तव्य अंकित करके अधिगृहीत 703 मै0 टन कोयला को अभियुक्तों के पक्ष में मुक्त करने का आदेश श्री सोलंकी ने धारा 6 आ0व0अ0 के अन्तर्गत किये गये कार्यवाही में अपर्याप्त, असिद्ध एवं परस्पर विरोधी आभिलेखों के आधार पर दे दिया जिसके लिए श्री सोलंकी सक्षम नहीं थे । धारा 6-अ आ0व0अ0 के अन्तर्गत वे या तो आवश्यक वस्तु को अधिगृहण कर सकते थे अथवा अधिगृहण करने से इन्कार कर सकते थे । वे किसी भी दशा में कोयले को मुक्त करने का आदेश देने के लिये सक्षम नहीं थे । कोयला को मुक्त करने का आदेश पारित करने का परिणाम यह हुआ कि जो व्यक्ति अनाधिकृत रूप से कोयला संगृहीत करने के लिए प्रथमत: दोषी पाये जाने के कारण आ0व0अ0 के अन्तर्गत अभियुक्त थे उन्हें ही पुन: कोयले का आधिपत्य मिल गया, यद्यपि अधिगृहण का कोयला विवेचनाधीन था । इस प्रकार श्री सोलंका का अभियुक्तों के पक्ष में आदेश पारित किया जाना दोषपूर्ण रहा ।

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TC Adv.

Annexure-A-5

(24) A31

प्रेषक :

अनिल कुमार सिंह सोलंकी,
संभागीय खाद्य नियंत्रक,
इलाहाबाद मण्डल,
कानपुर ।

सेवा में :

आयुक्त,
इलाहाबाद मण्डल,
इलाहाबाद ।

पत्रांक एस०टी/85 कानपुर दिनांक 8-5-85 1985

महोदय,

कृपया आप अपने गोपनीय अर्ध शासकीय पत्र संख्या डी० ओ०नं०31/पी०ए० दिनांक 19.4.85 का संदर्भ लेने का कष्ट करें जो कि मेरे अपर जिलाधिकारी, वाराणसी के कार्यकाल में कोयले के सम्बन्ध में मेरे द्वारा बरती गयी अनियमितताओं के बारे में है ।

मैं जून 1978 से जुलाई 1981 तक अतिरिक्त जिला अधिकारी (प्रशासन) वाराणसी के पद पर तैनात रहा । जहाँ तक मुझे याद है मेरे कार्यकाल में 30-40 स्थानों पर कोयला व्यापारियों के यहाँ छापे मारे गये थे और उनके विरुद्ध वाद कायम हुए थे । यह स्थान अतिरिक्त जिला अधिकारी प्रशासन की हैसियत से मेरे कार्य क्षेत्र में आते थे । किन्तु किन्ही कारणोंवश मैं इन वादों में निर्णय नहीं करना चाहता था । अतः मैंने तत्कालीन जिला अधिकारी महोदय से लिखित अनुरोध किया था कि कृपया वे इन वादों को किसी दूसरे अति० जिला अधिकारी के न्यायालय में स्थानान्तरित कर दें और जिला अधिकारी महोदय ने कृपापूर्वक इन वादों को स्थानान्तरित कर दिया था । किसी प्रकार 3 ऐसे वाद स्थानान्तरित होकर मेरे न्यायालय आये थे जिनकों निस्तारण मैंने किया था और यह वाद अन्तिम-फाइनल स्टेज पर थे जहाँ पर किसी साक्ष्य का लेने का प्रश्न नहीं था । वैसे तो जांच अधिकारी ने न तो मुझसे पूछताछ की और न ही रिकार्ड दिखाया किन्तु स्मरण शक्ति के आधार पर संलग्न परिशिष्ट में उल्लिखित आरोपों पर मेरी आख्या निम्न प्रकार है :-

मेरे विरुद्ध परिशिष्ट मे मुख्य रूप से 3 आरोप लगाये गये हैं । प्रथम आरोप यह है कि मैंने जिन उपरोक्त 3 वादों का निस्तारण किया था उनको सुनने व निर्णय देने के लिए मैं सक्षम नहीं था । अतः मैंने अपने अधिकार

To
Mr.
Adv.

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क्षेत्र से बाहर जाकर वादों का निस्तारण किया जो कि अवैधानिक है। यह आरोप वास्तव में अत्यन्त गम्भीर है क्योंकि जब किसी न्यायालय को किसी वाद के सुनने व निर्णय देने का अधिकार प्राप्त नहीं और फिर भी वह न्यायालय हठ वश, अज्ञानवश या किसी अन्य कारणवश उन वादों को सुने या वादों में निर्णय दे तो इसे एक गम्भीर त्रुटि अथवा न्यायालय को इन्देस्टेड पार्टी होने का दोषी माना जाना चाहिए। लेकिन जाँच अधिकारी का यह आरोप कि मैं उन वादों के सुनने अथवा निर्णय देने में सक्षम नहीं था एवं मैंने अपने न्यायिक/अधिकार क्षेत्र से बाहर निर्णय दिया, तथ्यास्पद ही नहीं अपितु उनकी विधि की अज्ञानता का परिचायक भी है क्योंकि प्रथम तो यदि मैं उन वादों के निस्तारण के लिए सक्षम नहीं था तो उन वादों को जिला अधिकारी महोदय व दीवानी न्यायालय द्वारा मेरे न्यायालय में क्यों स्थानान्तरित किया गया। इसके विपरीत मैं तो ऐसे वादों को मुझे न सौंपने की प्रार्थना जिला अधिकारी महोदय से पहले ही कर चुका था किन्तु फिर वादों को भेजा गया। इसके अतिरिक्त मेरे न्यायालय में स्थानान्तरित होकर आने से पूर्व यह वाद एक अन्य अतिरिक्त जिला अधिकारी के न्यायालय में भी चल चुके थे और वहाँ अभियोजन पक्ष अथवा बचाव पक्ष दोनों में से किसी ने भी अधिकार क्षेत्र के आधार पर आपत्ति नहीं की थी क्योंकि यदि ऐसा होता तो दोनों अथवा कोई एक पक्ष इस अनियमितता के विरुद्ध अवश्य आपत्ति करता। शासन द्वारा जब अधिकारियों की नियुक्ति जिले में की जाती है तब गजट नोटीफिकेशन द्वारा उनके कार्य/अधिकार क्षेत्र भी शासन द्वारा स्पष्ट कर दिये जाते हैं। अतिरिक्त जिला अधिकारी (प्रशासन) वाराणसी के सम्बन्ध में शासन द्वारा मेरी नियुक्ति पर निम्नलिखित नोटीफिकेशन जारी किया गया था :-

(अ) कोड आफ क्रिमिनल प्रासीजर, 1973 ऐक्ट नम्बर 2 1974 ई० की धारा 20 की उप धारा 2 के अधीन उन्हे वाराणसी जिले अतिरिक्त जिला अधिकारी प्रशासन नियुक्त किया जाता है और उक्त समस्त जिला उनकी अधिकारी सीमा में होगा और उनको उक्त कोड के अधीन और किसी अन्य सम्प्रति कानून के अन्तर्गत जिला मजिस्ट्रेट के समस्त अधिकार प्राप्त होंगे,

T.C. Ram Adv.

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§ब§ यू०पी० लैण्ड रेवेन्यू ऐक्ट, 1901 ई०/ यू०पी० के एक्ट संख्या 3, 1901 ई० की धारा 1 क की उप धारा §1§ के अधीन उन्हे उक्त जिले में अतिरिक्त कलेक्टर नियुक्त किया जाता है और उक्त धारा की उप धारा §3§ के अधीन उन्हे सभी श्रेणी के उन मुक्दमों में कलेक्टर के समस्त अधिकारों का उपयोग करने व कलेक्टर के समस्त कार्य करने के अधिकार दिये जाते है ।

जाँच अधिकारी को सम्भवत: इसका ज्ञान न रहा हो किन्तु उनको इतना ज्ञान तो अवश्य होना चाहिए था कि कन्डोल आर्डर तक में भी जिसके प्राविधानों के तहत इन वादों का निस्तारण किया जाता है, यह लिखाहुआ है कि कलेक्टर म इनक्लूडिंग एडीशनल कलेक्टर । इससे प्रतीत होता है कि उन्होने एशोसियेशन कमोडिटीज एक्ट पढने की कोशिश ही नहीं की ।

इस प्रकार जाँच अधिकारी महोदय का यह आरोप कि मैने इनवादों का निस्तारण अपने अधिकार क्षेत्र से बाहर किया, आधार रहित एवं असत्य है ।

मेरे विरुद्ध द्वितीय आरोप है कि मैने श्री मधु सूदन पात्रो को नोटिस नहीं दिया और श्री सूरज प्रसाद को श्री मधु सूदन पात्रो के लेटर आफ अथारिटी दिनाँक 26-11-79 के आधार पर ही उनका अधिकृत प्रतिनिधि मान लिया । सम्भवतया नोटिस देने के निर्देश का अभिप्राय यही था कि ताकि बरामद शुदा 703 टन कोयले के असली मालिक §जैन्यून ओनर§ का पता चल सके । श्री मधु सूदन पात्रो ने जब रेलवे स्टेशन मास्टर को सम्बोधित पत्र में श्री सूरज प्रकाश को अपना अधिकृत प्रतिनिधि सूचित किया है तो पुन: नोटिस देने या न देने का कोई महत्व नहीं है । क्योंकि यह बात विश्वास योग्य नहीं है कि मेरे न्यायालय से पूर्व दो न्यायालयों में इतने लम्बे समय तक वाद चलता रहे और जेन्यून ओनर न्यायालय के समक्ष उपस्थित होकर अपने कोयले को क्लेम न करे । यदि श्री पात्रो ने श्री सूरज प्रसाद को अधिकृत या नामित नहीं किया होता तो वह स्वयं उपस्थित होकर कोयले को क्लेम करते ।

T.C
Adv.

(27) ASJ

फिर पूर्व के दोनो न्यायालयों में भी कोयले के स्वामित्व के सम्बन्ध में कोई आपत्ति नहीं उठायी गयी और न ही मेरे न्यायालय में मेरे द्वारा नोटिस न देने पर अभियोजन पक्ष ने कोई आपत्ति की । यदि मेरे द्वारा इस सम्बन्ध में औपचारिकता निभाने में कोई लिप्त अ हुआ अथवा कोई पक्षपात दिखाया गया था या अनियमितता की गयी थी तो अभियोजन पक्ष को आपत्ति करनी चाहिए थी और बाद की औपचारिकता पूर्ण होने तक आगे नहीं बढने देना चाहिए था । अभियोजन पक्ष न्यायालय का अंग होता है और उसका उत्तरदायित्व स्टेट के हित की रक्षा करना व स्टेट/पक्ष का प्रस्तुत करना है । लेकिन अभियोजन पक्ष ने कोई आपत्ति नहीं की । इससे सिद्ध होता है कि श्री सूरज प्रसाद ही श्री मधु सूदन पात्रो के अधिकृत प्रतिनिधि थे और उनको ऐसा मानने में मेरे द्वारा किसी प्रकार की कोई अनियमितता नहीं की गयी ।

पाँच वर्ष के लम्बे समय के बाद अपने ~~कार्यकाल के~~ कार्य काल की हर छोटी छोटी बात को याद रखना अथवा बात बात पर स्पष्टीकरण देना व्यवहारिक सम्भव नहीं है । मेरे विरुद्ध जहाँ तक इस आरोप का सम्बन्ध है कि मैने परस्पर विरोधी अभिलेखों के रहते हुए कोयला मुक्त कर दिया जिसके लिए मैं किसी प्रकार से सक्षम नहीं था । आवश्यक वस्तु अधिनियम के तहत आने वाले अपराधों से सम्बन्धित वादों का निस्तारण सत्र न्यायालयों द्वारा ही किया जाता है अन्य जूनियर न्यायालयों द्वारा नहीं : कलेक्टर या जिला मजिस्ट्रेट के अधिकार आवश्यक वस्तु अधिनियम के अन्तर्गत केवल विवादित आवश्यक वस्तु के निस्तारण- मुक्त अथवा जब्त किये जाने तक ही सीमित हैं और उनका प्रभाव मुख्य अपराध या वाद पर किसी भी दशा में किसी भी सीमा तक नहीं पड़ता है । आवश्यक वस्तु अधिनि-यम के तहत आने वाले अपराधों से सम्बन्धित वादों का निस्तारण केवल सत्र न्यायालय द्वारा ही किया जाता है । अतिरिक्त जिला अधिकारी प्रशासन की हैसियत से मेरे द्वारा विवादित कोयला का मुक्त किया जाना सभी प्रकार से मेरी अधिकार सीमा में था और ऐसा करने में मेरे द्वारा किसी प्रकार की कोई अनियमितता नहीं की गयी । इसके अतिरिक्त भी मेरे आदेश इस सम्बन्ध में अन्तिम नहीं थे । मेरे आदेशों के विरुद्ध वरिष्ठ न्यायालयों में अपील का पर्याप्त प्राविधान है । यदि मेरे

TC
Adv.

(28)
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न्यायालय द्वारा कोपला अपने अधिकार सीमा से बाहर मुक्त किया गया था तो अभियोजन पक्ष को मेरे आदेशों के विरुद्ध वरिष्ठ न्यायालयों में अपील में जाना चाहिये था जो कि उसी परिसर में स्थित थे। यदि मेरे न्यायालय द्वारा किसी औपचारिकता का पालन नहीं किया गया था, रवैया पक्षपात पूर्ण या कोई अन्य त्रुटियां थीं तो अभियोजन पक्ष का कर्तव्य था कि वह मामले को एक कदम भी आगे बढ़ने न देता और मेरे विरुद्ध स्थान अथवा स्थानान्तरण आदेश उसी परिसर में स्थित वरिष्ठ न्यायालयों से तुरन्त प्राप्त करता। किन्तु ऐसा नहीं किया गया। न तो मेरे विरुद्ध कोई स्थान आदेश या स्थानान्तरण प्रार्थना पत्र अभियोजन पक्ष ने कभी प्रस्तुत किया और न मेरे आदेशों के विरुद्ध कोई अपील ही की गयी। इससे स्वयमेव सिद्ध होता है कि मेरे द्वारा वादों का निस्तारण नियमतः अपने अधिकार सीमा में ही किया गया।

इस प्रकार मेरे ऊपर लगाये गये समस्त आरोप मनगढ़न्त, आफ्टर थॉट, निराधार एवं असत्य हैं।

भवदीय,

[अनिल कुमार सिंह सोलंकी]
सभागीय खाद्य नियंत्रक,
इलाहाबाद मण्डल, कानपुर।

TC
Adv.

(29) 1986

D.O.No.85/P.A.

COMMISSIONER

गोपनीय
ALLAHABAD DIVISION
Allahabad
Annexure A-6

Dated 28-5-1988

प्रिय सोलंकी,

जब आप अपर जिलाधिकारी (प्रशासन) वाराणसी के पद पर कार्यरत थे तो शासन के संज्ञान में संलग्न परिशिष्ट पर अंकित अनियमितताएं प्रकाश में आई । इस सम्बन्ध में शासन ने आपका स्पष्टीकरण चाहा है । कृपया इन अनियमितताओं के सम्बन्ध में अपना स्पष्टीकरण मुझे शीघ्र भेजने का कष्ट करें ।

भवदीय,

(रवीन्द्र गुप्ता)

श्री अनिल कुमार सिंह सोलंकी,
संभागीय खाँध नियंत्रक,
इलाहाबाद मण्डल, कानपुर ।

Te
Adv.

U.P. Public Services Tribunal Bar, Lucknow

(30)

CLAIM NO. 451/1/1984

Annexure A-7

Mst. Iqbal Aqai. ----------Petitioner.

Vs.

1. State of U.P. through Secretary, Revenue Deptt.
2. Commissioner, Consolidation, U.P. Lucknow.

---O.ps.

A37

COPY OF J U D G E M E N T

This claim petition arised of the punishment order passed by O.p No.2 dt. 1/9/1984 (Annx. 3) under which the petitioner was reverted from the post of Asstt. Consolidation Officer to that of Consolidator. The petitioner has challenged this order and has prayed that the be treated as Asstt Consolidation officer throughout with consecuential benefits of salary etc.

In brief the facts are that the petitioner w. appointed as ACO Bahraich in 1976 after promotion form the post of Consolidator. While he was working on the sai[illegible] as 8 counts to which he submitted his reply (Anx. 2). Thereafter enquiry was conductdd and the petitioner w.s punished by the impunged order dt. 1/9/1984 (Ax. 3) reve-rting him from the post of ACO to that of Consolidator. The order of reversion has been challenged on various grounds. Inter alia it has been alleged that the petitioner has been charge-sheeted on the basis of judicial decision which he made in his capacity of ACO under the U.P. Consdidation of Holdings Act, which are the judicial proceedings and to which Section 9- A of the said Act provides protection. The enquiry was earlier held against the petitioner by Sri CM Pari which was quashed by the Consolidation Commissioner when it was sent to him for final decision and h[illegible] while quashing the said enquiry, had issued as many as 6 [illegible]rections for re- enquiry. These directions have not been followed by the Enquiry officer, therefore, the enquiry report on the basis of which the petitioner has been reverted was in contravention of the remaned order of the Consolidation Commissioner. The claim petition does not bear the details which the Consolidation Commissioner mentioned in his order of re-enquiry.

The O.ps. filed counter-affidavit in which the allegations of the petitioner have been denied and it has been contended that the second enquiry conducted by the

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Te
Advocate

(31)

Enquiry Officer was in accordance with the directions of the Consolidation Commissioner and also according to rules. It is also contended that no protection as claimed is available to the petitioner and therefore, the order of punishment passed against him by O.P No.2 is legal and valid and the claim petition deserves to be dismissed.

The petiiner filed a rejoinder -affidavit in which he more or less re-iterated the assertions of the main claim petition.

Heard the learned counsel for the petitioner as well as the learned Presenting Officer and also the Pairokar' of the Consolidation Commissioner and perused the documents on record as well as the departmental file produced before the Tribunal.

At the time of arguments only two main grounds were pressed by the learned counsel for the petitioner. The first is that the punishment order has been passed on the basis of judicial proceedings taken by the petitioner in consolidation cases. The second ground is that the directions issued by the Consolidation Commissioner for conducting second enquiry were not followed and so the enquiry is illegal which deprived the petitioner of his defence and violated the principles of natural justice.

As regards first contention, it is admitted between the parties that all the charges framed against the petitioner relate to Court proceedings. The contention of the learned counsel for the petitioner is that the petitioner could not be punished in any way for having passed any order as Asstt. Consolidation Officer in judicial Proceedings while the contention of the learned Presenting Officer is that the Consolidation Commissioner could take action against the petitioner when he was found guility of lapses and omissions but this much is admitted that charges are based upon court proceedings taken by the petitioner is all cases u/s 9-A of the U.P. Consolidation of Holdings Act, 1953, as is clear from the charge-sheet itself. Now the question is whether the decision taken by the petitioner in these cases mentioned in the charge-sheet are judicial decisions and no action could be taken against him except by way of appeal or revisions as provided under the Act and Rules framed thereunder. The petitioner seeks protection of

(32)

Section 40-A the Consolidation of Holdings Act, 1953 which says that no suit, prosecution or other legal proceedings shall lie against any person for any thing which is done in good faith or is intended to be done under this Act or Rules made thereunder. The contention of the learned counsel for the petitioner is that the departmental proceedings ae convered under the term " legal proceedings" . In A.I.R. 1985 -S.C. -1121 Anil Kumar Vs. Presiding officerand 1978 All Indi S.L.J. -591 and Kishore Prasad Vs. State of Bihar and others, Hon'ble Supreme Court has taken a view that departmental proceedings are quasi judicial proceedings. Thus there is no doubt about it that departmental proceedings are quasi judicial proceedings. Legal proceedings would mean and include the said proceedings which have the sanction of law or are intitiated under some law or Rules framed thereunder.

Article 311 of the Constituion provides safeguard to all Government servants whether under the Central Government or under any State. This Article protects a Government servant whether permanent or temporary , whether under the employment of State or Union of Unior territiory. Sub Clause (2) of Article 311 Under:-

" No Govt. servant shall be dismissed, removed or reduced in rank except after and enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges."

The Central Governmentas well as the State Government have framed Rules in order to ensure compliance of this Article. Rule 55 of the U.P. Classification, Control and Appeal Rules lay down procedure of compliance of the aforesaid Article. These Rules have the force of law because they are part of the State enactment. It, therefore, follows that any departmental proceedings initiated against any State Government employee are governed, controlled and regulated under these Rules which have the sanction of law and saa such are legal proceedings.

Section 40 of the U.P. Consolidation of Holdings Act, 1953 reads as Under:-

" A proceeding before a Director of Consolidation, Deputy Director of Consolidation, Settlement officer (Consolidation), Consolidtion officer and Asstt. Consolidation officer shall be deemed to be in---

Te. Adv.

(33)

RLO

judicial proceedings whithin the meaning of Section 193 and 228 and for the purposes of Section 196 of the Indian Panel Code." From the perusal of the above it is clear that proceedings underthe aforesaid Act are Judicial proceedings for purposes of Section 193 and 228 and also for purposes of Section, against the order of the ACO, which post the petitioner was holding.

Section 49 and Section 49-A of the U.P. Consolidation ofHoldings Act reas as under:-

" 49-A Notwith standing any thing contained in any other law for the time being in forec, the declaration and adjudiction of rights of tenure-holders in respect of land lying in an area for which a ntification has been issued under sub section (2) of Section 4 or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding- bould or ought ot have been taken under this Act shall be done in accordance with the provisionsof this Act and no Civil or Revenue Court shall entertain any suit or proceedings with respect to riohts in such land or with respect to any other matter for such a proceeding scould or ought to have been taken under this Act.

Provided that nothing inthe Section shall preclude the Asstt. Collector from initiating proceedings u/s 122-B of the U.P.Z.A.L.R. Act, 1950 in respect of any land , possession over which has been delivered or deemed to be delivered to a Gaon Sabha under or in accordance with the provisions of this Act.

49-A: Protection of Action taken under this Act or Rule made thereunder- No suit prosecution or other legal proceedings shall lie against any person for any thing which is in good faith done or intended to be done under this Act or Rules made thereunder.

Thus Section 49 of the Act bar the jurisdiction of the Civil Court, and Section 49 -A provides protection to Asstt. Consolidation Officer as well as other officers for any thing done in good faith under this Act or Rules made thereunder.

In this case, the petitioner has been charge -sheeted on various grounds in connection with consolidation proceedings. As mentioned above Section 49-A provides protection to ...

To
Adv.

such officers not only from Civil suit and criminal prosecution , but also from departmental proceedings which as discussed above are covered within the meaning of the term" legal proceedings." Thus it is bbvious that no departmental proceedings on the basis of judicial proceedings can be initiated in respect of matters decided by the petitioner as A.C.C. under the U.P. Consolidation of Holdings Act except by way of appeal or revision as provided under the law.

It was also contended that protection of Section 49-A of the consolidation of Holdings Act can be available to an officer only when the decisions are made in good faith. There are no allegations of malafide against the petitioner. Besides, the malafides could be best proved in appeal or revision. Appeals were filed against the decisions of the petitioner and the appellate court never held that the decisions of the petitioner smacked malafides. If the action of the petitioner was not in good faith in giving decisions in the cases mentioned in the charge - sheet, the appellate or revisional court only could hold malafides or otherwise against the petitioner while deciding cases but under no circumstances /residing Officer can be charge- sheeted on this account. Thus the contention of the learned Presenting officer is not acceptable.

A similar case claim No. 500/1/1982 Satya Deo Prasad Srivastava Vs. State of U.P. and consolidation Commissioner , U.P. had come up before this Tribunal which was decided on 5.2.1985. In that claim petition it was held by the Tribunal that departmental proceedings cannot be initiated against a A.C.C. for giving decisions under the U.P. Consolidation of Holdings Act and he had full protection u/s 49-A . The claim petition was allowed and the order of punishment against the A.C.C. concerned

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was quashed. The judgement of the Tribunal in that case has become final as it was not challenged before the Hon'ble High Court, as informed by the patroker of O.P. No.2 , Similar is the position in the instant case and so it has also to be allowed and the punishment order is to be quashed on the principle of parity as well.

Since the claim petition is being allowed on this ground only and so we do not enter into the merits of other arguments raised by the learned counsel for the petitioner . In net result the claim petition is liableto be allowed.

O R D E R

The claim petition is allowed. The order of reversion of the petitioner dt. 1/9/1984 (Annx.-3) passed by O.ps. No.2 is hereby quashed. The petitioner will be treated to have been working on thepost of A.C.O. throughtut as if the reversion order had not been passed. He will get full salary and increments and other benefits of the post of A.C .O. for the entire period.

In case the O.Js . fail to comply this order within a period of 3 months from today, the petitioner will be at liberty to get it executed through process of law.

The petitioner will also get Rs. 300/- as cost of this petition.

Sd/-
(Madan Mohan Lal)
Judicial Member. H.J.S.
28.7.86

Sd/-
(D.P.Varun)
Chairman. I.A.S.
28.7.86

Typed by:

Compared by:-

सत्य प्रमाणित प्रतिलिपि

कुमारेश
उप सचिव बोर्ड केन्द्रीय प्रशासनिक अधिकरण-I + II
इलाहाबाद

Tc
Advt.

(443)

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Annexure-A-8

In the Hon'ble High Court of Judicature at
Allahabad Lucknow Bench Lucknow.

Writ Petition No. 801 of 1987

1. The State of U.P. through the Secretary, Revenue Department U.P.Shashan, Lucknow.
2. The Commissioner, Consolidation 32, Station Road, Lucknow.

.....Petitioner

Versus.

1. Mohd.Iqbal Azmi S/O Hamid Husain, R/O village Bandighar, P.O. Bahraich.
2. District-Azamgarh, Presently posted as Assistant Consolidation office Rudhawli.
3. U.P.Public Services Tribunal No.1 Lucknow.

.....C.P parties

Writ Petition under Article 226
Constitution of India.

Lucknow dated: 10.4.1987

Hon'ble Kamleshwar Nath.

This Petition, under Article 226 of Constitution of India, seeks a Writ Cortiorari to quash the judgment dated 28.7.86. Annexure-1 to the petition, passed by U.P. Public Service Tribunal, Lucknow, opposite party No. 2 is a claim petition filed by opposite party No.1 against the order of his reversion from the post of Assistant Consolidation Officer to the post of Consolidator.

The recersion order was passed on the basis of a disciplinary enquiry on a charge of misconduct in the course of his performance of duties as Assistant Consolidation Officer in certain Consolidation proceedings. The short point raised by opposite party No. 1 was that since his functions as Assistant Consolidation Offider, under the Consolidation Act were of judicial nature, they could not form the basis of any disciplinary proceedings. Reliance has been placed on section 49A of Consolidation of Holdings Act which said that no suit or other legal proceedings shall lie against any person for any thing which is done in good faith or is intended to be

TC
Adv.

160499

Certified to be true copy
S.K. Ata
Advocate
24-12-88
Supreme Court of India

Annexure A9

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3338 OF 1988

(Arising out of S.L.P.(CIVIL) NO. 5202 OF 1987)

Mohd. Iqbal Azmi ... Petitioner

Versus

State of U.P.&Ors. ... Respondents

ORDER

Special Leave is granted.

We have heard learned counsel for the parties. In a very fair statement Mr.Gopal Subramanium appearing for the State of U.P. has placed the facts before us and upon that we are of opinion that the impugned judgment and order of the High Court should be set aside and the order of the Tribunal be restored. Accordingly, we set aside the judgment and order dated 10 April, 1987 of the High Court and restore the order dated 28 July, 1986 of the Tribunal. The appeal is disposed of accordingly. There will be no order as to costs.

The time granted by the Tribunal for compliance with its order is extended by three months from today.

Sd/-
.....J.

New Delhi,
22 September, 1988.

Sd/-
(E. RATNAJAN)
.....J.

Te
Adv.

(446) (40) (42)

Annexure A-10

प्रेषक,

अनिल कुमार सिंह सोलंकी,
सचिव एवं उपाध्यक्ष,
मेरठ विकास प्राधिकरण,
मेरठ ।

सेवा में,

सचिव,
नियुक्ति विभाग (नियुक्ति अनुभाग-2)
उत्तर प्रदेश शासन,
लखनऊ ।

पत्रांक ———— /केम्प/ दिनांक: कानपुर: सितम्बर 1989

विषय:- वर्ष 1979-80 में आवश्यक वस्तु अधिनियम, 1955 के अन्तर्गत 4 वादों में मेरेद्वारा पारित किये आदेशों में तथाकथित अनियमितताओं के सम्बन्ध में स्पष्टीकरण ।

महोदय,

उपर्युक्त विषयक श्री रविन्द्र गुप्त तत्कालीन आयुक्त, इलाहाबाद मण्डल के गोपनीय अर्द्धशासकीय पत्र सं0 85/सी0ए0 दिनांक 28-5-1988 में मेरा स्पष्टीकरण माँगा गया है । इस सम्बंध में मेरा निम्न निवेदन है :-

(1) यह है कि उक्त पत्र के प्राप्त होने के पूर्व भी इसी विषय में श्री ए0 पी0 सिंह तत्कालीन आयुक्त, इलाहाबाद मण्डल के गोपनीय अर्द्धशासकीय पत्र संख्या 51/पी0ए0 दिनांक 19-4-1985 में भी मेरा स्पष्टीकरण माँगा गया था । श्री ए0पी0 सिंह के उक्त पत्र में माँगे गये स्पष्टीकरण के उत्तर में मैंने अपना विस्तृत स्पष्टीकरण अपने पत्र संख्या एस0टी0/85 (आर 122) दिनांक 8-5-1985 में जो श्री ए0पी0सिंह को सम्बोधित था प्रस्तुत कर दिया था । मुझे पूर्ण आशा है कि मेरा उक्त स्पष्टीकरण शासन को प्राप्त हो गया होगा । उक्त स्पष्टीकरण में मैंने अपने को निर्दोष सिद्ध करने हेतु अपनी स्थिति स्पष्ट कर दी है कि प्रश्नगत आदेश मेरे द्वारा सद्भावनापूर्वक अपने विवेक का उपयोग करते हुए पारित किये गये हैं । मुझे पूर्ण आशा थी कि मेरे स्पष्टीकरण के अवलोकन करने के उपरान्त शासन द्वारा इस प्रकरण को समाप्त कर दिया गया होगा । ऐसा प्रतीत होता है कि मेरा उक्त स्पष्टीकरण शासन को प्राप्त नहीं हुआ है अन्यथा यह प्रकरण पहले ही समाप्त हो गया होता ।

क्रमशः- 2

(A24)

(37)

done under the Act, or Rules made there under. The services Tribunal accepted the contention of opposite party No. and held that since the departmental disciplinary proceeding is a legal proceeding, within the meaning of section 49A, it was not permissible to hold that proceeding. On this basis the claim petition was allowed and the order of the reversion was quashed.

In this Petition, on behalf of the State, reliance has been placed on a decision of a Division Bench of this Court in Mukhtar Singh V.State of U.P.(1986 Lucknow Civil Decisions 437)

I have heard learned Standing Counsel and Sri A.Mannan for opposite party No.1.

It is clear enough that the benefit of Section 49A of the Consolidation of Holdings Act would be available only when it is shown that the impunged act has been done in good faith. The Tribunal observed that the question of good faith could be decided only by the appealats of revisional court against the orders which might had been passed by opposite party No.1 which is the subject-matter of disciplinary proceedings. That is not the correct position. The matter regarding good faith will be decided by the Tribunal itself. In this situation, the impunged order passed by the Tribunal cannot be sustained.

The petition is allowed, the impunged order dated 28.7.86, contained in Annexure-1 to the petition, passed by opposite party No.2. is quashed. The opposite party No.2 is directed to dispose of the claim peitition on merits and in doing so it will be open to the Tribunal also to examine the question whether or not the impunged action of opposite party No.1, in the Consolidation proceedings, which is the subject matter of the charge sheet had been preformed in good faith.

The Tribunal may dispose of the matter as early as possible, say within three months from the date of the serving of the copy of this order upon it.

K.Nath.
10.4.87

Tc
Adv.

160499

(A6) (38)

Certified to be true copy
S.K. Ayya
24-12-
Assistant Registrar
Supreme Court of India

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Annexure A9

CIVIL APPEAL NO. 3338 OF 1988
(Arising out of S.L.P.(CIVIL).NO. 5202 OF 1987)

Mohd. Iqbal Azmi ... Petitioner

Versus

State of U.P.&Ors. ... Respondents

O R D E R

Special Leave is granted.

We have heard learned counsel for the parties. In a very fair statement Mr.Gopal Subramanium appearing for the State of U.P. has placed the facts before us and upon that we are of opinion that the impugned judgment and order of the High Court should be set aside and the order of the Tribunal be restored. Accordingly, we set aside the judgment and order dated 10 April, 1987 of the High Court and restore the order dated 28 July, 1986 of the Tribunal. The appeal is disposed of accordingly. There will be no order as to costs.

The time granted by the Tribunal for compliance with its order is extended by three months from today.

Sd/-
.....J.

Sd/-
.....J.
(S. NATARAJAN)

New Delhi,
22 September, 1988.

Tc
Adv.

(AU6) (40)

Annexure A-10

प्रेषक,

अनिल कुमार सिंह सोलंकी,
सचिव एवं उपाध्यक्ष,
मेरठ विकास प्राधीकरण,
मेरठ ।

सेवा में,

सचिव,
नियुक्ति विभाग (नियुक्ति अनुभाग-2)
उत्तर प्रदेश शासन,
लखनऊ ।

पत्रांक _____/केम्प/ दिनांक: कानपुर: सितम्बर 1989

विषय:- वर्ष 1979-80 में आवश्यक वस्तु अधिनियम, 1955 के अन्तर्गत 4 वादों में मेरेद्वारा पारित किये आदेशों में तथाकथित अनियमितताओं के सम्बंध में स्पष्टीकरण ।

महोदय,

उपर्युक्त विषयक श्री रविन्द्र गुप्त तत्कालीन आयुक्त, इलाहाबाद मण्डल के गोपनीय अर्द्धशासकीय पत्र सं0 85/पी0ए0 दिनांक 28-5-1988 में मेरा स्पष्टीकरण माँगा गया है । इस सम्बंध में मेरा निम्न निवेदन है :-

(1) यह है कि उक्त पत्र के प्राप्त होने के पूर्व भी इसी विषय में श्री ए0 पी0 सिंह तत्कालीन आयुक्त, इलाहाबाद मण्डल के गोपनीय अर्द्धशासकीय पत्र संख्या 51/पी0ए0 दिनांक 19-4-1985 में भी मेरा स्पष्टीकरण माँगा गया था । श्री ए0पी0 सिंह के उक्त पत्र में माँगे गये स्पष्टीकरण के उत्तर में मैंने अपना विस्तृत स्पष्टीकरण अपने पत्र संख्या एस0टी0/85 (आर 122) दिनांक 8-5-1985 में जो श्री ए0पी0सिंह को सम्बोधित था प्रस्तुत कर दिया था । मुझे पूर्ण आशा है कि मेरा उक्त स्पष्टीकरण शासन को प्राप्त हो गया होगा । उक्त स्पष्टीकरण में मैंने अपने को निर्दोष सिद्ध करने हेतु अपनी स्थिति स्पष्ट कर दी है कि प्रश्नगत आदेश मेरे द्वारा सद्भावनापूर्वक अपने विवेक का उपयोग करते हुए पारित किये गये हैं । मुझे पूर्ण आशा थी कि मेरे स्पष्टीकरण के अवलोकन करने के उपरान्त शासन द्वारा इस प्रकरण को समाप्त कर दिया गया होगा । ऐसा प्रतीत होता है कि मेरा उक्त स्पष्टीकरण शासन को प्राप्त नहीं हुआ है अन्यथा यह प्रकरण पहले ही समाप्त हो गया होता ।

क्रमशः- 2

Tc
Adv.

(A47) (41)

(2) यह कि अपने विषय पर श्री रविन्द्र गुप्ता, तत्कालीन आयुक्त इलाहाबाद मण्डल का संदर्भित पत्र प्राप्त करके मुझे आश्चर्य हुआ कि कदाचित मेरा दिनांक 8-5-1985 का पत्र जिसमें मैंने अपना स्पष्टीकरण प्रस्तुत किया है, प्राप्त नहीं हुआ । श्री गुप्त के पत्र से यह भी स्पष्ट नहीं है कि क्या पूर्व में दिये गये मेरे स्पष्टीकरण से शासन संतुष्ट नहीं है या मेरा वह स्पष्टीकरण शासन तक पहुँचा ही नहीं है । अतः मैं अपने माह मई, 1985 में प्रस्तुत किये गये स्पष्टीकरण की एक प्रति संगम संदर्भ हेतु संलग्नक-क पर संलग्न कर रहा हूँ ।

(3) यह कि मैंने अपने पिछले स्पष्टीकरण में आवश्यक वस्तु अधिनियम 1955 के उस प्रावधान का उल्लेख नहीं किया था जिसके अधीन मैं प्रश्नगत कोयले को मुक्त करने हेतु सक्षम था । इस सम्बंध में मेरा निवेदन है कि शासन ने जून, 1970 में मुझे अतिरिक्त जिलाधिकारी (शासन) वाराणसी तथा अतिरिक्त कलेक्टर वाराणसी के पद पर नियुक्त किया था । शासन द्वारा उक्त नियुक्ति के सम्बंध में जो विज्ञप्ति जारी की थी में उसमें मुझे अतिरिक्त कलेक्टर के अधिकार यू०पी० लैण्ड रेवेन्यू ऐक्ट, 1901 की धारा 1(क) की उप धारा (1) के अधीन प्रदान किये गये थे तथा मुझे वाराणसी जिले हेतु अतिरिक्त [illegible] पर नियुक्त किया गया था और उक्त धारा (3) के अधीन तथा वैधानिक मुकदमों में कलेक्टर के समस्त अधिकारों का उपयोग करने व कलेक्टर के समस्त कार्य करने के अधिकार दिये गये थे । आवश्यक वस्तु अधिनियम 1955 की धारा 2(1)(एफ) के अधीन भी मुझे कलेक्टर वाराणसी के अधिकार प्राप्त थे । इन्हीं अधिकारों के आधार पर प्रश्नगत चार मामले मेरे न्यायालय में निस्तारण हेतु स्थानान्तरित किये गये थे । आवश्यक वस्तु अधिनियम 1955 के धारा 6(ई०) में मुझे प्रदत्त अधिकारों का सदभावना पूर्वक उपयोग करते हुए मैंने प्रश्नगत कोयले को मुक्त करने हेतु आदेश पारित किया था । जहाँ तक मुझे स्मरण है इन चारों मामलों में पत्रावली पर उपलब्ध समस्त अभिलेखों एवं साक्ष्यों को ध्यानपूर्वक अध्ययन करने तथा

क्रमशः - 3

TC
Adv.

दोनों पक्षों द्वारा प्रस्तुत किये गये तथ्यों एवं तर्कों पर विचार करने के पश्चात् ही मैं इस निष्कर्ष पर पहुँचा कि प्रश्नगत कोयले को जब्त करने का कोई औचित्य नहीं था। ऐसी दशा में मैंने प्रश्नगत कोयले को मुक्त करने हेतु आवश्यक वस्तु अधिनियम की धारा 6:सी: के अन्तर्गत प्रदत्त अधिकारों का सद्भावना पूर्वक उपयोग करके आदेश पारित किया । अतः मेरे विरुद्ध लगाया गया यह आरोप पूर्णतया निराधार है कि मैं उक्त कोयले को मुक्त करने हेतु सक्षम नहीं था । इस सम्बंध में यह भी उल्लेखनीय है कि अभियोजन पक्ष की ओर से मेरे द्वारा पारित किये गये आदेशों के विरुद्धराज्य सरकार द्वारा अपील दायर करके किया गया जिसके परिणामस्वरूप मेरे द्वारा पारित किये गये आदेश अपील हो गये । अतः इस आधार पर मेरे विरुद्ध कोई भी आरोप नहीं लगाया जा सकता है और इस आधार पर इस प्रकरण को समाप्त करना ही न्यायोचित होगा ।

4. यह कि इसी प्रकार के ऐसे ही अनेक मामलों में अनेक जिला अधिकारियों द्वारा विगत वर्षों में ऐसे ही आदेशपारित किये गये हैं और आज भी किये जा रहे हैं । यही नहीं श्री आर०एन० श्रीवास्तव तत्कालीन एस०डी०एम० सिटी द्वारा भी मुख्यतया ऐसे अनेक मामलों में कोयले को मुक्त करने हेतु आदेश पारित किया गये थे परन्तु उनसे इस सम्बंध में न तो कोई पूछताछ की गयी और न ही उनका स्पष्टीकरण माँगा गया । जबकि मेरे द्वारा उनके न्यायालय स्थानान्तरित किये ही 4 मामलों में कोयले को मुक्त करने के विषय में मेरे द्वारा पारित किये गये आदेशों के सम्बंध में बार-बार स्पष्टीकरण माँगा जा रहा है जो भारत के संविधान की धारा 14 तथा 16 के प्राविधानों के अनुसार मेरे प्रति शासन द्वारा भेदभाव की नीति अपना रहा है जो असंवैधानिक है ।

5. यह कि आवश्यक वस्तु अधिनियम की धारा 15 में इस आशय के सुरक्षात्मक प्राविधान है कि सक्षम अधिकारी द्वारा सद्भावना से पारित किये गये आदेशों के विषय में ऐसे अधिकारी के विरुद्ध किसी भी प्रकार की विधि तथा अन्य कोई कार्यवाही नहीं की

क्रमशः 4

(Ans) (43)

जा सकती है । ऐसी दशा में मेरे द्वारा आवश्यक वस्तु अधिनियम के प्राविधानों के अन्तर्गत सद्भावना से पारित किए गए आदेशों के विषय में मेरा स्पष्टीकरण मांगना अथवा मेरे विरूद्ध विभागीय कार्यवाही करना विधिक दृष्टि से अवैध समझा जायेगा । ऐसे ही मामले में माननीय सर्वोच्च न्यायालय ने मुहम्मद इकबाल आजमी बनाम उ0 प्र0 शासन व एस0 एल0 पी0 सिविल सं0 ०5202/1987 में अपने आदेश दिनांक 22.9.88 में यह व्यवस्था दिया है कि किसी अधिनियम के अधीन प्राप्त अधिकारों का सद्भावना से उपयोग करते हुए सक्षम अधिकारी द्वारा पारित किए गए आदेशों के सम्बन्ध में ऐसे अधिकारी का स्पष्टीकरण मांगना तथा उसके विरूद्ध विभागीय कार्यवाही करना पूर्णतया अवैध है । माननीय सर्वोच्च न्यायालय, इलाहाबाद की लखनऊ पीठ के दिनांक 10.4.87 के निर्णय एवं आदेश जो उनके द्वारा रिट याचिका संख्या 801/1987 में पारित किये गए है, को निरस्त करते हुए उ0 प्र0 लोक अधिकरण सं0 ०3, लखनऊ के निर्णय एवं आदेश दिनांक 8.7.1986 को बहाल किया है । सर्वोच्च न्यायालय के उक्त आदेश दिनांक 22.9.1988 के अनुसार श्री मुहम्मद इकबाल आजमी द्वारा उत्तर प्रदेश जोत चकबन्दी अधिनियम 1953 के अन्तर्गत पारित किए आदेशों के सम्बन्ध में उनके विरूद्ध की गई विभागीय कार्यवाही तथा उसके फलस्वरूप उनको दिया गया दण्ड निरस्त कर दिया गया है । उत्तर प्रदेश लोक सेवा अधिकरण सं0 111 के निर्णय एवं आदेश दिनांक 27.8.86, इलाहाबाद उच्च न्यायालय की लखनऊ पीठ के निर्णय दिनांक 10.4.87 एवं सर्वोच्च न्यायालय के आदेश दिनांक 22.9.1988 के आदेश की प्रतियां संलग्नक "ख" पर रखी हैं ।

87। यह कि ऐसे मामलों में सम्बन्धित अधिकारी के विरूद्ध उसी दशा में कार्यवाही की जा सकती है जबकि Appellate Authority या Revisional Court द्वारा उनके विरूद्ध कोई प्रतिकूल टिप्पणी । strictures । अंकित किया गया हो । मेरे द्वारा पारित किए गए प्रश्नगत आदेशों के विरूद्ध अभियोजन पत्र / राज्य सरकार की ओर से न तो कोई आपत्ति की गई और न ही अपील

क्रमशः-------- 5 पर

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Adv.

(A60) (44)

दायर करके मेरे आदेशों को किया गया । ऐसी दशा में माननीय सर्वोच्च न्यायालय द्वारा की गई व्यवस्था के अनुसार भी मेरे विरुद्ध कोई कार्यवाही करना अथवा मेरा स्पष्टीकरण माँगना पूर्ण तथा अविधि है ।

अतः वर्णित परिस्थिति में शासन से मेरा अत्यन्त नम्रता के साथ निवेदन है कि मेरे स्पष्टीकरण में उल्लिखित तथ्यों एवं तर्कों को ध्यान में रखते हुए इस प्रकरण को समाप्त करने हेतु आदेश प्रसारित करने की कृपा की जाये जिसके लिए मैं शासन का सदैव आभारी रहूँगा।

संलग्नक:उपरोक्तानुसार

भवदीय,

(अनिल कुमार सिंह तोलंजी)

TC
Adv.

(45) (45)

ब अदालत श्रीमान In the Central Administrative Tribunal, महोदय
[वादी अपीलाण्ट] Circuit Bench, Lucknow.
श्री .....
प्रतिवादी [रेस्पाडेन्ट] का

वकालतनामा

O.A. Registration No. 165 of 1990 (L)

Anil Kumar Singh
Sd/adci

वादी (अपीलाण्ट)

Union of India & others बनाम प्रतिवादी (रेस्पाडेन्ट)

नं० मुकद्दमा सन् पेशी की ता० १९ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री Radhika Raman, Advocate,
C-4, Sector-A, Mahanagar, Lucknow.
व R.S. Srivastava Advocate 4/563 वकील महोदय
Vikasnagar Lucknow एडवोकेट

नाम अदालत .....
मुकद्दमा नं० .....
नाम फरीकैन .....

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक 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 होगा मैं 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 दिया प्रमाण रहे और समय पर काम आवे।

Accepted
Radhika Raman
Radhika Raman
Advocate, High Court and
Services Tribunals,
C-4 Sector-A,
Mahanagar, LUCKNOW

Accepted
R.S. Srivastava
Advocate

हस्ताक्षर .....

साक्षी (गवाह) ..... साक्षी (गवाह) .....

दिनांक ..... महीना ——— सन् १९ ई०

स्वीकृत