

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 171 of 1990 (C)

APPLICANT(S) S. D. Tewari

RESPONDENT(S) U. O. C.

Particulars to be examined	Endorsement as to result of examination
1. Is the appeal competent ?	Yes
2. a) Is the application in the prescribed form ?	Yes
b) Is the application in paper book form ?	Yes
c) Have six complete sets of the application been filed ?	Yes (2+3)
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.O./Postal Order for Rs.50/-	Yes (P.O. No. 002-400906) Rs. 50/-
6. Has the certified copy/copies of the order(s) against which the application is made been filed?	Yes
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	Yes
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	Yes
c) Are the documents referred to in (a) above neatly typed in double space ?	Yes
8. Has the index of documents been filed and paging done properly ?	Yes
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application?	Yes
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?	Yes

(1/2)

<u>Particulars to be Examined</u>	<u>Endorsement as to result of examination</u>
11. Are the application/duplicate copy/spare copies signed ?	Yes
12. Are extra copies of the application with Annexures filed ? a) Identical with the Original ? b) Defective ? c) Wanting in Annexures Nos. _____ pages Nos _____ ?	Yes
13. Have the file size envelopes bearing full addresses of the respondents been filed ?	No
14. Are the given address the registered address ?	Yes
15. Do the names of the parties stated in the copies tally with those indicated in the application ?	Yes
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?	NA
17. Are the facts of the case mentioned in item no. 6 of the application ? a) Concise ? b) Under distinct heads ? c) Numbered consecutively ? d) Typed in double space on one side of the paper ?	Yes (Item no 4)
18. Have the particulars for interim order prayed for indicated with reasons ?	Yes
19. Whether all the remedies have been exhausted.	Yes

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(A3)
CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH,
CIRCUIT BENCH,
LUCKNOW
....

Reg. No. OA 171/1990(L)

Swami Daal Tewari

Vs.

Applicant

Union of India & Others

Respondents

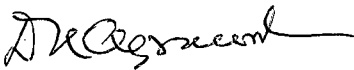
21.5.1990

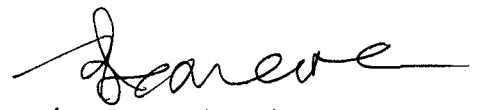
Present:

No one is present for the applicant. However, we have perused the file.

Admit. Issue notice to the respondents to file their counter affidavit within six weeks of the receipt of this order with a copy to the applicant who may file a rejoinder, if any, within two weeks thereafter. List on 27.8.90 for directions.

or
noticed on
24/5/90
d


(D.K. Agarwal)
Member (Judl.)


(B.C. Mathur)
Vice-Chairman (A)

OR
Notices were issued
on 24-5-90 by Regd. Post.
Neither reply nor
any formal reply has
been returned by
S. F. O.

8-90

Division Bench is not available
Adj. to 29.10.90

L
14/11/90 23/8/90
L
11/3/91

0 190


No setting Adj. to 19.11.90
P

संसीरटी/एल के आ/सीबी/रुमरससी/
केन्द्रीय प्रशासनिक अधिकरण
सर्किट बेन्च,

171-90L

रेजीडेन्सी

2/7/91

D.R.

Sri D.S. Chaubey Id. C/A.
has also been filed an
application for fixing the
case for Ex parte hearing.
Hence, this case is to be
listed before the Hon. Bench
on 4/7/91 for orders.

R

4.7.91

जज. न. जस्टिस व. ए. सरवास्वत
जज. न. A.B. Gosh. AM

No Counter has been filed.
Case is adjourned for final hearing
on 14.9.91

1
AM

LC

CA filed
26/7/91

OR
CA filed along with
application for condonation
of delay.
No RA filed
MP 294-91L for
Ex parte hearing.
S.P.O.

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

O.A.No. 171/90(L)

S.D.Tewari

Applicant

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. A.B.Gorthi, Adm. Member.

The applicant who was dismissed from service, was chargesheeted and the departmental enquiry proceeded. The applicant, after the submission of the enquiry officer's report reduced to five stages from Rs 900/- to Rs 825 vide order dated 30.12.88. The applicant filed appeal and the appeal was dismissed on 31.7.89. Then he approached the Tribunal.

There appears to ^{be} no delay but the appeal was decided. The ~~preliminary~~ objection is that of limitation. The enquiry officer's report was not given by the respondents before the punishment order was passed. The enquiry officer must ~~have~~ given the report in time but the enquiry report was given to the applicant at the later stage. The non-giving the enquiry report, thus deprives the applicant from making representation which is violative of principles of natural justice. This question was decided in Union of India vs. Mohd. Ramzan Khan (1991) Supreme Court cases (L&S) 612 wherein it has been held that non-furnishing of the report to the delinquent would be violative of principles of natural justice rendering the final

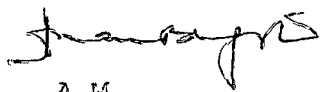
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order ~~void~~ invalid. The application deserves to be allowed and accordingly, it is allowed. The punishment order dated 30.12.88 and the appellate order dated 31.7.89 communicated to the applicant by the letter dated 15.12.89 are quashed. It will not preclude the disciplinary authority to proceed from the stage of enquiry. The applicant will be deemed ^{to be} in service. 2

No order as to costs.



A.M.



V.C.

Lucknow Dated: 16.9.91

of Receipts by Past.....

V Deputy Registrar (J)

Dated: Lucknow,
May
April 16, 1990.

(AIO)

Administrative Tribunal

Lucknow

17-5-90

File of Receipt by Post

In the Hon'ble Central Administrative Tribunal.

Additional Bench, Allahabad.

Deputy Registrar (J)

Circuit Bench, Lucknow.

Registration No. 171 of 1990 (L).

Application under Section 19 of
Administrative Tribunal Act, 1985.

Swami Dayal
Tewari.

Applicant.

Versus.

Union of India
and others.

Respondents.

COMPILATION - A

-
1. Application under Section 19
of the Central Administrative
Tribunal Act.
 2. Annexure No.1.
Punishment order
dated 30-12-1988.
 3. Annexure No.2.
Appellate order dated
31-7-1989, communicated
on 15-12-1989.
 4. Annexure No.3.
Appeal dated
13-2-1989.
 5. Annexure No.4.
Enquiry report.
-

(Signature)

Applicant.

(Signature)
D.S. Chaube

Advocate.

Counsel for Applicant.

Lucknow: Dated:

May 16 1990.

ve Trib...
17-5-90
... of Reg. by Post...

V. w
... Reg. (J)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
CIRCUIT BENCH, LUCKNOW.

Registration No. 171 of 1990(L).

PARTIES NAME

Swami Dayal Tewari, aged about 43 years,
son of ~~Latika~~ ~~matap~~ ~~Tiwari~~ Postman, Aminabad
Park Post Office, Lucknow.

... Applicant.

versus

1. Union of India through the Director,
Postal Services, Lucknow Region,
Lucknow.
2. Senior Superintendent of Post Offices,
Lucknow Division, Lucknow.
3. Assistant Superintendent of Post
Offices, West Sub Division, Lucknow.

... Respondents.

---oOo---

Latika Matap Tiwari
Applicant.

D.S. Chaube

Dated: Lucknow,
~~May~~ 16, 1990.

(D.S. Chaube)
Advocate,
Counsel for the applicant.

In the Hon'ble Central Administrative Tribunal, Registrar (D)

Additional Bench, Allahabad.

Circuit Bench, Lucknow.

Registration No. 171 of 1990 (L).

Swami Dayal Tewari, aged about 43 years, Son of Late Shri
Ram Pratap Tewari, Postman, Aminabad Park Post Office,
Lucknow.

--- Applicant.

Versus.

1. Union of India through the Director, Postal Services,
Lucknow Region, Lucknow.
2. Senior Superintendent of Post Offices, Lucknow
Division, Lucknow.
3. Assistant Superintendent of Post Offices, West
Sub-division, Lucknow.

----- Respondent.

(1). Particulars of the order against which application is made.

The applicant is against the following orders:

- (1). Appellate order dated 31-7-1989 No. RDL/App.125/89/13.
- (2). Date 31-7-1989 communicated on 16-12-1989 by letter
dated 15-12-1989.
- (3). Passed by the Director, Postal Services Lucknow Region,
Lucknow.
- (4). Subject in By means of this order, the appeal filed
brief: by the applicant against the punishment
order dated 30-12-1988 to reduce salary
by five stages was rejected by the Director,
Postal Services, Lucknow Region, Lucknow.

*Contd. from
Page 11*

A/3

-: 2 :-

(2). Jurisdiction of the Tribunal.

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

(3). Limitation:

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

(4). The facts of the case are given below:-

1. That the applicant is holding the post of Postman under the respondents. He was charge-sheeted by order of respondent No.3 contained in memorandum No.B/Gen/Discp/86-87 dated ~~11-11-1986~~ 11-11-1986.
2. That the petitioner furnished his written statement and thereafter enquiry was conducted by Shri Ram Lal Prasad, Enquiry Officer who submitted his enquiry report on 1-12-1988.
3. That the enquiry report was not disclosed nor given to the applicant before the punishment order passed and a copy thereof was given only by the letter dated 18-1-1989 on demand made by the applicant.

For the
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4. That after submission of the enquiry report, the applicant was given punishment by the respondent No.2 vide order dated 30-12-1988 by means of which the salary of applicant was reduced by five stages from Rs.900/- to Rs.825/- in the time scale of pay of Rs.825-1200/- for a period of five years with effect from 1-2-1989 with the directions that he will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing future increments. A true copy of punishment order is enclosed as Annexure-1 to this application.

5. That the applicant filed appeal on 13-2-1989 against the order of punishment which was not properly considered and rejected on 31-7-1989 by the Director, of postal services and the rejection was communicated by the letter dated 15-12-1989 of Senior Superintendent of Post Office, Lucknow Division. A true copy of rejection order is enclosed as Annexure-2 to this ~~xxx~~ application.

6. That the disciplinary proceeding against the applicant was initially instituted by the Senior Superintendent of Post Office, respondent No.3 vide his order contained in memorandum No.FX/Discp-24/86-87 dated 6-10-1986 but subsequently this power was exercised

S. K. Singh
1/11/89

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by the respondent No.3 vide his No.Gen/Discp/86-87 dated 3_6-1987. The enquiry report was also directly submitted to the respondent No.2 who pass the punishment order in violation of Rule 14(21)(a) and Rule 18 of Central Civil Services (Classification, Control and Appeal) Rules 1965.

7. That the applicant in his appeal dated ~~12-12~~ 13-2-1989 furnished details to show his innocence and also a illegality committed in conducting disciplinary proceeding and imposition of punishment but no proper consideration was given. A true copy of appeal is enclosed as Annexure-3 to this application.

8. That the applicant has been held guilty on mere surmises and without proper evidence in the enquiry report which was accepted by the punishing authority in mechanical manner. Neither the enquiry report ~~nor~~ the comments furnished by respondent No.3 were disclosed to the applicant nor opportunity to defend his cause was given before imposition of punishment. A true copy of enquiry report is enclosed as Annexure-4 to this application.

9. That the charges have been deemed substantiated against the applicant with pre-determined mind and without any proper evidence and the enquiry officer as well as punishing authority failed to take notice of this important

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material that the statement of witnesses are self contradictory.

(5). Grounds for relief with legal provisions.

1. That the order of punishment is non-speaking in as much as the enquiry report was neither disclosed nor the same was made part of punishment order.
2. That the order of punishment is violative to the principle of natural justice in as much as the applicant was not given opportunity to make representation against the enquiry report as well as the comments furnished by respondent No.3.
3. That the order of punishment is without jurisdiction in as much as the respondent No.2 was not competent to exercise the power of disciplinary authority in a proceeding instituted by another disciplinary authority.
4. That the applicant has been furnished on the basis of charge-sheet which itself is bad in law as no rule 62 as mentioned in the 2nd charge exist in P & T Manual Volume-II.

Sgt
19/11/11

(A7)

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5. That the findings are based of contradictory and unreliable statements of Shri O.P. Banga and Shri Kashi Ram.

6. That although, the appellate authority came to the conclusion that the applicant cannot be held guilty for leaving the office without permission, yet the punishment earlier imposed was upheld.

7. That the finding of the appellate authority in respect of charges is also based on the concocted version and the same could not get proper appreciation.

8. That the punishment of reduction in salary imposed with the direction that the applicant will not earn increments during the period of reduction and at the same time to direct that the reduction will have the effect of postponing future increments are contradictory and violative to the doctrine of double jeopardy.

(6). Details of remedies exhausted.

The applicant declares that he has availed of all the remedies available to him under the rules. He may appeal on 13-12-1989 contained in Annexure-3 of the application which was rejected by order dated 31-7-1989 communicated on 15-12-1989 contained in Annexure-2 of the application.

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11/12/89
11/12/89

(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 or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of thej.

(8).

Brief Sought:

In view of the facts mentioned in paragraphs 5 and 6 above, the applicant prays for the following reliefs:

to quash the impugned order of punishment dated 30-12-1988 contained in Annexure-1 and appellate order dated 31-7-1989 contained in Annexure-2 with consequential full benefits.

(9).

Interim order prayer:

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

to stay the operation of impugned order of punishment dated 30-12-1988 contained in Annexure-1 and appellate order dated 31-7-1989 contained in Annexure-2 to the application.

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(10). Not required.

(11). Particulars of Bank Draft/Postal order in respect of the application fee.

- (1). No. of postal order; 802-408906
- (2). Name of post Office: Aminabad Park, Lucknow.
- (3). Date of issue of postal order. 27-3-1990.
- (4). Post Office at which payable.

(12). List of enclosures.

- (1). Punishment order dated 30-12-1988.
- (2). Appellate order dated 31-7-1989 served upon the application on 15-12-1989.
- (3). Appeal.
- (4). Enquiry report.

V E R I F I C A T I O N

I, Swami Dayal Tewari, aged about 43 years, Son of Late Shri Ram Pratap Tewari, Postman, Aminabad Park Post Office:, Lucknow do hereby verify that the contents of paras 1 to 12 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Lucknow: Dated:

May 16, 1990.

Swami Dayal Tewari

Signature of Applicant.

A20 10

In the Hon'ble Central Administrative Tribunal, Allahabad
Circuit Bench Lucknow.

Application Registration No. _____ of 1990.

S.D. Tewari

Petitioner

Versus

Director of Postal Services
Lucknow & others

Opp. Parties.

Annexure No. 1

Department of Posts

Office of the Sr. Supdt. of Post offices
Lucknow Division, Lucknow-226003.

Memo No.: Fx/Misc.-24/Ch.II/86-87 Dt. At Lw. 30.12.1988.

Shri Swami Dayal Tewari, Postman was served with a charge sheet under Rule 14 of CCS(CCA) Rules, 1965 under ASPos (west) Lucknow Memo No. B/Genl/Discpl./86-87 dated 11.11.1986. The charges according to the said memo levelled against Shri Swami Dayal Tewari, Postman are as under:-

आरोप-पत्र

श्री स्वामी दयाल तिवारी पोस्टमैन, आवास विकास कालोनी, उप डाक्टर लखनऊ के पद पर कार्य करते हुए दिनांक 9.7.86 को राजेन्द्रनगर उपडाक्टर में जाकर लगभग 4.50 बजे साथ श्री ओपी० बेगा उपडाक्टर राजेन्द्रनगर के प्रति अशिष्ट भाषा का उच्चारण करते हुए उन पर अपने चप्पल से प्रहार किया। ऐसा करते हुए उन्होंने अनुशासन भंग किया। अतएव उन पर आरोप लगाया जाता है कि उन्होंने एक सरकारी कर्मचारी न होने जैसा (Unbecoming of Govt. Servant.)

*Attested Copy
Signature
Date*

स्वामी दयाल तिवारी

कार्य करके केन्द्रीय सिविल सेवा आवरण 1964 सी०सी०एस० कन्डेक्ट
रूल्स 1964 के नियम 3११ का उल्लंघन किया।

आरोप नम्बर १ द्वितीय

उक्त श्री स्वामी दयाल तिवारी, पोस्टमैन आवास विकास
कालोनी उपडाक्टर लखनऊ दिनांक 9.7.86 को अपराह्न
साढ़े तीन बजे से 5.30 ब्याये साढ़े पांच बजे तक अपने कार्यालय आवास
विकास कालोनी डाक्टर से बिना किसी लिखित आज्ञा प्राप्त किये
अपने कार्यकाल Working Hours. से अधिकृत रूप से अनुपस्थित
रहे अतः उन पर आरोप लगाया जाता है कि उन्होंने डाक्टर
नियमावली छाण्ड 2 के नियम 62 का उल्लंघन किया।

Shri Ram Lal prasad was appointed as Enquiry
officer vide ASPOs (West), Lucknow Memo no. BmGenl/86-87
dated 11.11.86 to hold enquiry against Shri Swami Dayal
Tewari and Shri Girza Shanker Tewari in a common
proceedings under Rule 18 of CCSOCCA) Rules 1965. The
enquiries were started on 27.2.1987 and were completed
on 13.9.88. The accused officials changed their defence
nominee applying delaying tactics in holding enquiries
by Enquiry officer as stated by I.O. in para 2 of para 2
of enquiry report. In the Enquiry report enquiring
officer has established both the charges against
Shri Swami Dayal Tewari that he had beaten Shri O.P.
Banga the then SPM, Rajendra Nagar using unparliamentary
language against him on 9.7.86 and that he left A.V.
Colony PO for committing this mischief. It was calculated
planning of Shri Swami Dayal Tewari he with the assistance

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Suman
Date
स्वामी दयाल तिवारी

of his

of his colleague Shri Girza Shanker Tewari beat Shri O.P.

Banga for reason not required to explain. According to their plan both left L.V. Colony PO on 9.7.87 after rendering their returns and reached Rajendra Nagar at some time between 15.30 hrs. Shri Swami Dayal Tewari after reaching Rajendra Nagar alongwith he accompish Shri Girza Shanker Tewari and entered in the Chamber of Shri O.P. Banga the then SPM, Rajander Nagar. While Shri Swami Dayal Tewari started beating Shri O.P. Banga with chappal using unparliamentary language. Shri Girza Shanker Tewari standing at the door of Chamber for his assistance. Enquiring officer in his enquiry report submitted under memo no. Ba/Janch/Niam-14/88-89 dated 1.12.88 established without any doubt both the charges as aforesaid against Shri Swami Dayal Tewari.

Though the charges are so grave as to warrant dismissal of Shri Swami Dayal Tewari but taking lenient view considering his past services and hard times it has been decided that Shri Swami Dayal Tewari should be reduced by 5 stages from Rs. 900/- to Rs. 825/- in the time scale of pay Rs. 825 -15-900-15-20-1200/- for a period of 5 years w.e.f. 1.2.89. It is further directed that Shri Swami Dayal Tewari will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect

of the

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of the postponing of his future increments
of pay.

sd/-

Sr. Supdt. of Post Offices,
Lucknow Dn., Lucknow-226003.

Copy to:-

1. The official concerned.
2. P.F. of the official.
3. C.R. file of the official.
4. Punishment register.
5. Vigilance Stt.
6. Sr. P.M. Chowk HO, Lucknow. with two copies.

*Attested copy
Skumar
Ade*

For the undersigned

A24 14

In the Hon'ble Central Administrative Tribunal, Allahabad
Circuit Bench Lucknow.

Application Registration No. of 1990.

Swami Dayal Tewari

Petitioner

Versus

State

Directors of Postal Services
and others

Opp. Parties.

Annexure No. 2

Office of the Director Postal Services
Lucknow Region: Lucknow-226007.

Memo No. RDL/App.-125/89/13 at Lucknow: 31.7.1989.

This is the appeal dated 13.2.89 from Shri S.D. Tewari, Postman Aminabad Park PO against punishment orders of the SSPOs Lucknow imposing penalty of reduction of pay by five stages under his no. Fx/Misc./24/ChII/86-87 dated 30.12.1988, Though the appeal has been preferred within time, it has been forwarded to this office on 19.6.89 by the SSPOs Lucknow.

The appellant was proceeded against under rule 14 of the CCS (CCA) Rules 1965 vide ASPOs (West) memo no. B/Genl/Disc/86.87 dated 11.11.86 wherein it was alleged that (a) the appellant while working as postman A.V. Colony PO Lucknow attended Rajendranagar PO at 16.50 hours on 9.7.86 used abusive language against the S.P.M. Shri O.P. Banga and assaulted him with chappals and thereby contravened the provisions of rules 3(1) (iii) of the CCS

Attested Copy
S. Kumar
12/8/89

12/8/89
12/8/89

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-2-

(Conduct) rules 1964.

(b) that the appellant unauthorisedly remained absent from duty at AVAS Vikas colony PO from 15.30 hours to 17.30 hours on 9.7.86 without written orders, thereby violating provisions of rule 62 of P&T Man. Vol. II.

2.2. The appellant denied the charges levelled against him vide his letter dated 20.10.1986. Detailed enquiries as envisaged in 14 of the CCS (CCA) Rules 1965 were therefore conducted by the E.O. who submitted his report on 1.12.88 concluding the charges as proved. The SSPOs Lucknow, empowered to inflict major penalty, having regard to the findings of the E.O. and in consideration of past service and hard days awarded penalty of reduction of pay by five stages for a period of 5 years w.e. from 1.2.89 vide memo dated 30.12.88. The present appeal is against the penalty.

3. The appellant has repeated the narration of the brief submitted by him to the E.O. in his appeal though in a little refined way. He has denied the occurrence of assault in hitting himself to the altercation with Shri O.P. Banga by hair splitting the 3 statements of Sri Banga furnished at 3 different occasions. However, the appellant has come up with the following arguments against the punishment awarded to him by the SSPOs Lucknow.

Handwritten signature/initials

Handwritten signature/initials

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A26

(i) The article of charge containing indecent utterance and assault with chappals being not supported by appropriate codified rules became unsustainable and incomplete in the light of directorate instruction issued some time past in the matter.

(ii) The second article of charge is supported by non-existent rule 62 of P&T Man Vol. II which finds place in Volume III. The charge being inconsistent with the codified rule deserves to be dismissed on this single technical score.

(iii) The SSPOs Lucknow in conducting as disciplinary authority under provisions of rule 18 of CCS (CCA) Rules 1965 violated the provisions of rule 14(21) (a) and 18 of the CCS(CCA) Rules 1965 and that too without opinion of the disciplinary authority is invalid being beyond jurisdiction.

4. The memo of charges, the punishment order and the disciplinary file have been carefully examined and gone through with particular reference of the arguments and other disclosures in the appeal. I would like to discuss them as follows:

(i) The most vital issue which the appellant has raised is that whether the SSPOs Lucknow has gone beyond his jurisdiction in conducting himself as

Attested
Sharma
ADP

14/11/14

(A27) 17

disciplinary authority under provisions of rule 18 of the CCS (CCA) Rules 1965 and whether rule 14 (21) (A) prohibits him from acting as such. Rule 14(2) (a) lays down that the disciplinary authority not competent to impose major penalty having regard to its decision on any finding of the inquiring authority is of the opinion that major penalty should be imposed on government servant he will forward the case to the authority competent to impose the maximum major penalty. In the light of the above there was nothing wrong in conducting as disciplinary authority by the SSPOs Lucknow.

(ii) The next argument regarding invoking provisions of non-existent rule 62 of P&T MAN VOL II is also not admissible as the rules from serial no.11 to 109 originally belonged to P&T Man.Vol.II which have been deleted from it and incorporated in P&T Man.Vol.III. It, is however, observed that the provisions of rule 62 have been invoked as the appellant had left the office at 5.30 hrs after rendering his accounts. Once the Postman has rendered his account of return articles he is free from his job and can leave the office for which no specific permission is required. He is not required to sit idly till close of the office for no purpose. The appellant cannot therefore, be justifiably charged for violation of rule 62.

Substantially correct
SSPO Lucknow
JA

Final order

(iii) The argument that the charge of occurrence of assault is not supported by any codified rule is also not admissible.

(iv) The appellant has at length denied the incidence of assault on the S.P.H. Sri Banga while the statements of Sri Banga and Shri Kashi Pd. prove otherwise. Sri Sheo Pd. in his statement has also corroborated with the fact that he saw the appellant enraged with raised hands and talking loudly with the SPM. There are sufficient witnesses to prove the incidence. There is no substance in the argument of the appellant that he visited the SPM for requesting despatch of the personal file/service book to the ASPOs, this is only an after thought as he was not concerned with them any way. The incidence of assault by the appellant on Sri Banga is proved beyond any element of doubt.

In view of the above I find that the penalty has been imposed on the charges which stand proved. The misconduct of the appellant was extremely grave and deserved exemplary notice and punishment. The disciplinary authority has already taken lenient view in the case which appears misplaced. Such conducts don't deserve any forgiveness or leniency. If they are not tackled in exemplary way entire public service and administration will

Attosha
Summa
Adwani

For the Director

fail and anarchy will prevail. hence I don't find any reason to interfere.

5. I, therefore, hereby reject the appeal of the appellant and confirm the penalty already imposed on the appellant vide SSPOs Lucknow Division memo referred to above.

sd/-B.P. Singh
Director Postal Services,
Lucknow Region: Lucknow- 226007.

Copy to:

1. The official concerned.
- 2.4 SSPOs Lucknow Division, Lucknow.
- 5.6. Office copy and spare.

Handwritten: *Handwritten Mark*

Attested copy
Stamper
etc

From:

Sri Swami Dayal Tewari,
Postman, Aminabad Partk,
Lucknow.

No. Fx/Misc.24/Loose/86-87 dated 15.12.1989.

Subject: Decision of Appeal on 13.2.89.

The D.P.S. Lucknow region, Lucknow memo no. RDL/
APP-123/89/13 on 31.7.89 is sent herewith. Please
acknowledge its receipt of the same.

sd/-Sr. Supdt. of Post Office
Lucknow Division.

Can't find it

Attested copy
S. K. Sharma
AC

(A21)

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

Registration No. 171 of 1990(L).

Swam Dayal Tewari ... Applicant.

versus

Union of India and others Respondents.

---oOo---

COMPILATION B.

<u>S.No.</u>	<u>Particulars</u>	<u>Page No.</u>	<u>Annexure no.</u>
1.	Appeal filed by the applicant against the punishment order.	1-7	3
2.	Enquiry report.	8-19	4
3.	Vakalatnama	20	

(Signature)

Applicant.

(Signature)

(D.S. Chaube)

Advocate,

Counsel for the applicant.

Dated: Lucknow,
May 16, 1990.

(Signature)

A32

In the Hon'le Central Administrative Tribunal, Allahabad
Circuit Bench Lucknow.

Application Registration no. 171 of 1990. (4)

Swami Dayal Tewari

Petitioner

Versus

Director of Postal services
Lucknow Region & others

Opp. Parties.

Annexure No. 3

To,

The Director of Postal Services,
Lucknow Region,
Lucknow.

(Through Proper Channel)

Sub: Appeal against punishment of reduction vide SSPOs
Lucknow Memo No. FX/Misc. 24/Ch-III/86-87 dated
30.12.1988.

Respected Sir,

1. The appellant begs to prefer an appeal against the
the punishment of reduction of pay from the stage of 900/-
to Rs. 825/- inflicted vide aforesaid memo and hopes that the
appeal would be considered sympathetically and justice
restored in view of points below.

2. The appellant was charge sheeted vide ASPCs (West)
Lucknow memo No. B/Genl/Discpl./86.87 dated 11.11.86 with
articles of charges as contained in the punishment order
dated 30.12.88 under appeal. On denial of the charges, the

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A33

-2-

case was got inquired under rule 14 of C.G.S.(C.S.&A) Rules 1965 and report submitted direct to the SSPOs Lucknow by whom the above punishment has been awarded, ignoring ~~xxx~~ rule 45 of P&T Manual Vol.III.

3. The appellant begs to submit that he was an active member of a recognised union and on account of his office as unionist he had addressed a complaint against Shri O.P.Banga, the then S.P.M. Rajindra Nagar. It was natural for him to entertain grudge against the appellant. He hastened to punish the appellant with stoppage of increment vide his No.9/Dely. MR. Nagar dated 4.2.86, which was declared null and void by the SSPOs Lucknow vide his No.B-8/A/1-Swami Dayal, on the ground of want of jurisdiction. The appellant went to Rajindra Nagar on 9.7.86 in connection with his personal file, accompanied by his friend Shri Girja Shankar and met his fellow-workers of the office. In the meanwhile, as ill luck would have it, he met the SPM. In the course of usual conversation, an altercation took place between the appellant and the SPM-Sri Banga. But neither any abusive language was used by the appellant beat SPM. The SPM got an opportunity to enrope the appellant in another false case cooked up by him. At first he addressed a letter to his office P.R.I. n 10.7.86 asking him to enquire into alleged misbehaviour, without mention of its nature, on the part of the appellant.

Accepted
Sd/-
10/7/86

for information

Then he addressed a letter to SSPOs Lucknow by name on 15.7.86, alleging that the appellant assaulted him with Chappal, while no such thing was stated in the letter dated 10.7.86. The case was enquired and statement obtained. Shri Banga, the SPM gave a statement with further improvement that the appellant's friend Sri Girja Shanker Tewari took the appellant out after the alleged occurrence, but at the same time stated that Sri Kashi Ram saved him and took the appellant out (Exh.3). Shri Shiv Prasad, P.A. Rajindra Nagar had already given his statement to the P.R.I. on 11.7.86, that both the appellant and Girja Shankar had a hot talk with the SPM and expelled by Sri Kashi Ram, while Kashi Ram stated on 11.7.86 that both were beating the S.P.M. A charge sheet was issued by the ASPOs (West) Lucknow on 11.11.86, with inconsistent, unreliable and perverse evidence to support, as above in which the complainant himself gave three different accounts of the alleged occurrence, which have been accepted for establishment of the charge without required scrutiny with the consequence appealed against.

4. It is humbly submitted the charges have been contained in two articles. The 1st article of charge is allegation of indecent utterance and beating with Chappal without supporting it by appropriate codified rule and basing it only on conduct rule 3(i) (iii) of CCS. (Conduct)

*Attended copy
Sharma*

Chandra Mohan

Rules 1964, while second charge has been supported by non-existent codified rule 62 of P&T Manual Vol. II while on such rule exist in Vol. II as rule 62 is contained in P&T Manual Vol. III. According to the D.G's instructions circulated sometimes between 1985 to Dec. 88, a charge must contain codified rule and conduct rule to become a complete charge and if either of the two is missing, a charge is incomplete and unsustainable. Thus in view of the above ruling the first article of the charge is incomplete while the second one invalid based as it is, on misquoted codified rule in rule 62 of P&T Manual Vol. III. If these submissions are accepted by your honour, the charge sheet must fall on technical error in the charges.

5. Thus, the charge sheet is invalid and evidence inadmissible for want of consistency of allegation levelled by the complainant himself. In fact, the allegations of the SPM Sri Banga contained in the three documents as discussed in para 3 above, at best be held as inconsistent complaints and the evidence of Shri Kashi Ram a testimony of a sole witness, which does not corroborate the versions of the SPM for he has stated that two persons were beating, while the complainant has stated that only the appellant assaulted. The evidence of Sri Banga cannot be an evidence of an independent witness for he was a party and that

*Attested
Shri Kashi Ram
[Signature]*

Shri Kashi Ram

witless while the statement of Sri Kashi Ram cannot be reliable for it does not corroborate Sri Banga's Statement. The grudge in the mind of the SPM cannot be ruled out which in the manner the M.O. has established and learned punishing authority has accepted without discussing the defence version as was a judicial duty imposed on him. With all respects for the learned punishing authority he had to pass a reasoned order with justice for both parties, at least, with judicial fairness. The findings of the learned punishing authority are not findings in the eye of law, for these have not been arrived at after full discussions of prosecution and defence. Mere repetition of the inquiry report on certain points discloses non application of mind and the appellant cannot be said to have been satisfied by hearing him on defence points.

6. Thus neither charge sheet nor evidence nor enquiry nor judgment conform to legal requirements in regard to the case in which the appellant has been punished with so irretrievable damage to him and independent. In other words, if the available evidence leave least shadow of doubt in r/o hypothesis of guilt sought to be proved and any other hypothesis is possible but that to be proved the charge cannot be validly held as proved. The appellant was an unionist, the SPM's grudge in proved by his infliction of punishment without jurisdiction and hence his evidence

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 S. Kumar
 and grounds

cannot be relied upon. Even the sole witness Sri Kashi Ram did not corroborate him that he was assaulted with Chappals by the appellant. In view of above, the prosecution story is established as concoction. There is no complaint of abuse. as contained in the charge.

7. Besides above submission, the appellant was charge sheeted by ASPOs (West) Lucknow, The learned ASPOs Lucknow vide no. FX/ Misc.24/86-87 dated 6.10.86 took upon it the powers of being disciplinary authority under rule 18 of CCS(CCA) Rules arbitrarily by his even order. But apprehending the allegations of prejudice, returned the powers to ASPOs (West) again whereupon, he, vide his No. Geb1./Disp./86-87 dated 3.6.87 informed the appellant that he Aslas (West) was the disciplinary authority. One wonders how the inquiry report in r/o the case was submitted directly to the learned SSPOs Lucknow contravening rule 14(21) of C.G.S. (C.G.A) Rules 1965 and how the penalty was inflicted by him assuming powers not conferred by rule 14(21)(a), and 18 of CCA(CCA) Rules 1965 the provisions whereof were to be mandatorily allowed and if he had powers opinion of the disciplinary authority taken and contained in the punishment order. The departure from the mandatory procedure, the only cloak of protection afford reasonable ground that in fact the administration was

*Attested by
S. K. Singh
J. K. Singh*

For the appellant

not interested in justice to the appellant who is equally entitled to it for no body can be punished except by procedure established by law and in administration, except by procedure established by law & rules. The violation of established procedure vitiated the punishment order.

8. Your honour as an appellate authority to whom aggrieved reaches, for restoration of justice, may agree that the charge sheet is invalid, evidence not reliable in the circumstances, procedure diseased with fault and prejudice and punishment not sustainable as submitted.

P R A Y E R

And ,therefore, the appellant begs that the order of the punishment may kindly be quashed, The appellant shall remain grateful for the kindness bestowed upon him.

Dated: 13.2.89

Yours faithfully,
sd/-Swami Dayal Tewari
Postman-A.ParkLucknow.

Copy to the Sri.Suptd. of Post Offices, Lucknow.
for necessary action.

*Attested copy
Swami
Dayal*

Swami Dayal

(A39)

सम्झा : इन दि आनरोबिल सेंट्रल एडमिनिस्ट्रेटिव ट्रिब्यूनल, इलाहाबाद
सरकिट बेन्च, लहानऊ

अप्लीकेशन रजिस्ट्रेशन नं० :

/1990.

स्वामी दयाल तिवारी

याची

जाम

यूनियन आफ इण्डिया तथा अन्य

प्रतिवादीगणा

एनेक्टर नं० : 4

भारतीय डाक विभाग

प्रेषक,

राम लाल प्रसाद,
जॉच अधिकारी,

सेवा में,

प्रवर डाक अधीक्षक,
लहानऊ मण्डल, लहानऊ।

ज्ञापन संख्या / जॉच नियम 14/88-89

दिनांक 1.12.1988.

विषय : श्री स्वामी दयाल तिवारी व श्री गिरजा शंकर तिवारी
पोस्ट में आर्टि० कालोनी लहानऊ के विरुद्ध नियम 14
के अन्तर्गत जॉच की आख्या।

आपका ज्ञापन संख्या -व- सामान्य-डीआईएस/86-87
SSPos No. Ex-Misc.24-88-89-

महोदय,

सहायक डाक अधीक्षक लहानऊ परिचमी के ज्ञापन संख्या

B/General Dis./86-87

दिनांक 11.11.86 द्वारा मुझे सर्वश्री

स्वामी दयाल तिवारी व गिरजा शंकर तिवारी पोस्ट में के विरुद्ध
लगाए गए आरोपों की जॉच करने के लिए जॉच अधिकारी नियुक्त
किया गया था। श्री स्वामी दयाल तिवारी पर निम्न आरोप
लगाये गये थे :-

फाईल नं० 11/86

(A40)

9

-2-

प्रथम आरोप

श्री स्वामी दयाल तिवारी, पोस्ट मै आवास विकास कालोनी लखनऊ के पद पर कार्य करते हुए दिनांक 9.7.86 को राजेन्द्रनगर उपडाकदार को जाकर लगभग 4.50 बजे सायं श्री ओ०पी० बागा उपडाकपाल राजेन्द्रनगर के प्रति आशिष्ट भाषणा का उच्चारण करते हुए उन पर अपने चप्पल से प्रहार किया। ऐसा करते हुए उन्होंने अनुशासन भंग किया। अतएव उन पर आरोप लगाया जाता है कि उन्होंने एक सरकारी कर्मचारी न होने जैसा **Unbecoming of a Government servants** कार्य करके **C.C.S. (Conduct) Rules-64** के नियम 3(1) का उल्लंघन किया।

आरोप संख्या : 2

उक्त श्री स्वामी दयाल तिवारी दि कि 9.7.86 को अपरान्ह 3 1/2 बजे से 5.30 सायं तक अपने कार्यालय आवास विकास कालोनी डाकदार से बिना किसी लिखित आज्ञा प्राप्त किए अपने कार्य-काल **Working hours** में अनधिकृत रूप से अनुपस्थित रहे। अतः उन पर आरोप लगाया जाता है कि उन्होंने डाक्टर नियमावली छाण्ड - 2 **Prt. Manual Vol. II** के नियम 62 का उल्लंघन किया।

श्री गिरजा शंकर तिवारी पर निम्न आरोप लगाये गये

अ. :-

श्री गिरजा शंकर तिवारी पोस्टमैन आवास विकास कालोनी लखनऊ के पद पर कार्य करते हुए दिनांक 9.7.86 को अपरान्ह 5.30 बजे से सायं 5.30 बजे तक बिना उपडाकपाल से लिखित आज्ञा प्राप्त किए अनधिकृत रूप से अपने कार्यकाल में **Working hours** ही अपना कार्यालय छोड़कर श्री स्वामी दयाल तिवारी पोस्टमैन आ०वि० कालोनी का उपडाकदार राजेन्द्रनगर जाकर गलत एवं अनुशासन हीन कार्य करने में साथ दिया एवं श्री ओ०पी० बागा उपडाकपाल राजेन्द्रनगर जब श्री स्वामी दयाल तिवारी द्वारा चप्पल से मारे गये उस समय में उक्त श्री गिरजा शंकर तिवारी उनके सहयोगी थे

Attested copy
Shuman

प्रमाणित किया गया

के रूप में घाटनास्थल पर उपस्थित रहे। अतः उन पर आरोप लगाया जाता है कि उन्होंने डाक्टर नियमावली छाण्ड-11 §पोस्ट एण्ड टेलीग्राफ§ मैनुअल वालूम-11§ के नियम 62 का उल्लंघन किया और एक सरकारी कर्मचारी न होने जैसा **Unbecoming of Govt. Servants** कार्य करके केन्द्रीय सिविल सेवा §आवरण§ नियमावली 864 के नियम 3§ 1§ 111§ का उल्लंघन किया।

2. जांच दिनांक 27.2.87 से प्रारम्भ होकर दिनांक 13.9.85 को समाप्त हुआ। अभियोजित कर्मचारियों द्वारा बार बार ब्याव प्रति निधिया के बदलने एवं असहयोगात्मक रवैया के कारण तथा जांच अधिकारों में अविश्वास प्रकट करने के फलस्वरूप जांच में अनावश्यक विलम्ब हुआ। जांच अधिकारों के बदलने के आवेदन पत्र पर डाक निदेशा-क लेखानऊ के आदेशा के फलस्वरूप जांच कई महीनों बाद पुनः प्रारम्भ करने के कारण जांच में देरी हुई। कई स्मरण पत्र देने के बाद ही आरोपित कर्मचारियों का ब्यान संदिग्ध 15.11.88 को इस कार्यालय में प्राप्त हुआ जबकि अभियोजन अधिकारी ने अपना संदिग्ध सार उनको 24.9.88 को ही दे दिया था। इस प्रकार विलम्ब आरोपित कर्मचारियों के कारण हुआ।

3. अभियोजन पक्षा की ओर से आरोपों की सिद्ध करने के लिए निम्नलिखित कागजात प्रस्तुत किए गए।

- | | |
|------|---|
| § 1§ | घाटना की जांच हेतु आदेशा दिनांक 9.7.86 |
| § 2§ | उपडाकपाल राजेन्द्रनगर का त्र बी।एसपीएस 15.7.86 |
| § 3§ | ब्यान श्री ओपीओ बांगा दिनांक 7.8.86 |
| § 4§ | ब्यान श्री दिाव प्रसाद दिनांक 11.7.86 |
| § 5§ | ब्यान श्री एस0एस0लाल दिनांक 8.8.86 |
| § 6§ | ब्यान श्री काशी राम दिनांक 11.7.86 |
| § 7§ | ब्यान श्री राम आलरे सिंह दिनांक 11.7.86 |
| § 8§ | ब्यान श्री राज करन श्रीवास्तव दिनांक 11.7.86 |
| § 9§ | ब्यान श्री हरद्वारी लाल दिनांक 12.7.86 |
| § 4§ | अभियोजन पक्षा की ओर से आरोपों को सिद्ध करने के लिए निम्नलिखित गवाह प्रस्तुत किए गए। |

हस्ताक्षरित गवाह

- ११ भारतीय ओवि० डा० को संघा पत्र संख्या यूनियन 85-86-4
दिनांक 18.3.86
- २२ प्रवर डा० अष्टीक्षाक पत्र संख्या : एम० एल० 86 दिनांक फरवरी
1986.
- ३३ प्रवन डा० ओ सहा० पत्र यूनियन ई-बी० डी० के० एल-ईडीआरएल/
86 दिनांक 20.3.86/31.3.86.
- ४४ SPM Rajendra Nagar/Delevery dt.4.4.86(D4)
- ५५ SPM Rajendra Nagar/Delevery RNo.dt.7.7.86
- ६६ SSPO LuNo.B8/2/ISDayal ft.20.10.86 ED6.
- ७७ ओभा० पो० व० दिनांक 4/218/80 दि० 26.3.80.
- ८८ SSPO Lko.No.L/86 dt. 21.1.86(D8)

6. जवाब पक्षा की तरफ से निम्न गवाह प्रस्तुत किए गए:

- ११ श्री मोहंजर लाल, डा० सहायक
- २२ श्री मूलचन्द्र शर्मा, पोस्टमैन
- ३३ श्री कमलेश, डा० सहायक
- ४४ श्री जानन्द कुमार, पोस्टमैन

७७ आरोपित कर्मचारी सर्वश्री स्वामी दयाल तिवारी एवं
गिरजा शंकर तिवारी ने अपना लिखित जवाब न देकर स्वयं
जोच जाँचाकारों के समक्ष बयान दिए जिनका प्रतिपरीक्षा अभियोजन
पक्षा द्वारा किया गया।

जोच आख्या श्री स्वामी दयाल तिवारी

आरोप नम्बर एक:

श्री ओ० पी० जोगा ने बताया कि दिनांक 9.7.86 को
लगभग 16.40 पर श्री स्वामी दयाल तिवारी एवं गिरजा शंकर
तिवारी राजेन्द्रनगर डा० कार आए। श्री स्वामी दयाल तिवारी
थोड़ी देर बाद उनके चेम्बर में घाते एवं एक राजिस्ट्री का लिफाफा
दिखाया और पूछा कि क्या आपने इसे भोजा है। उसने वह सरकारी
राजिस्ट्री के लिफाफे के अन्दर से पत्र निकाल कर देखा और कहा कि

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मैं ही भोजा है। इस बीच गिरजा शंकर तिवारी उनके चेम्बर व डिसेंबर ब्रान्च के बीच स्थित दरवाजे पर छाड़े रहे। श्री स्वामी दयाल तिवारी ने पूछा कि तुमने मुझे क्यों दण्ड दिया है इस पर श्री बांगा ने बताया कि संबंधित फाइल देखाने से ही बां सक्ता हूँ। इस पर श्री स्वामी दयाल तिवारी उत्तेजित हो गये तूंगा चप्पल से पीटने लगे। इतने में श्री गिरजा शंकर तिवारी जो दरवाजे पर ही छाड़े थे अन्दर जाकर स्वामी दयाल तिवारी को पकड़कर कहा कि चेम्बर से बाहर आओ जित्त काम के लिए हम लोग आए थे वह पूरा हो गया। इसी बीच काशी राम पैकर भेरे चेम्बर में आकर भेरी रक्षा की तथा स्वामी दयाल को चेम्बर से बाहर किया तथा उसके पीछे श्री गिरजा शंकर तिवारी भी चले गए। श्री ओ०पी० बांगा ब्वाव सहायकों के अथम प्रयास के बाद भी अपने पिछले बयान से ठस से मस नहीं हुए जबकि ब्वाव सहायकों ने उनके अनावश्यक एवं अपमान जनक प्रश्न पूछकर उत्तेजित करने का भी असफल प्रयास किया। वह सत्य पर अटल रहे।

श्री काशी राम पैकर राजेन्द्रनगर ने भी अपने बयान में पिछले बयान दिनांक 11.7.86 की पुष्टि की जिसमें उसने कहा था कि शाम लगभग 4.50 पर श्री स्वामी दयाल तिवारी एवं गिरजा शंकर तिवारी पोस्टमैन पोस्टमास्टर साहब को मार रहे थे और जाकर पकड़कर स्वामी दयाल को कमरे से बाहर किया। स्वामी दयाल गुस्से में बड़बड़ा रहे थे। स्वामी दयाल का चप्पल जो कमरे में छूट गया था उसे पैर से कमरे से बाहर किया। श्री काशी राम ने अपने प्रति परीक्षाणा में उक्त बयान की पुष्टि की तथा कहा कि वहाँ श्री गिरजा शंकर तिवारी एवं स्वामी दयाल तिवारी मौजूद थे। श्री गिरजा शंकर तिवारी, स्वामी दयाल तिवारी को बाहर ले जा रहे थे।

इस प्रकार श्री ओ०पी० बांगा के कथन की पूर्णरूपेण पुष्टि श्री काशी राम के बयान से हो जाती है। यह गवाह भी अपने प्रतिपरीक्षाणा में अटल रहा जिसने घाटना की पुष्टि हो जाती है। इसके बयान का मूल्यांकन ब्वाव पक्षा यह कहकर कि वह श्री बांगा का मातहत है स्वतन्त्र नहीं है और नहीं निष्पक्ष। कम करने का असफल प्रयास किया है।

श्री शिव प्रसाद डाक सहायक ने अपने बयान दिनांक 4.5.88

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को पिछले बयान दिनांक 11.7.86 ईएक्स-पी-48 की पुष्टि करते हुए प्रतिपरीक्षा में कहा कि 5 बजे के आसपास कोई मेल आती जाती नहीं है मैं अपनी साट पर खाली बैठा था। स्वामी दयाल व गिरजा शंकर मेरी साट से गुजरे थे व खानाने तक गए थे। आगे उन्होंने स्पष्ट किया कि स्वामी दयाल हाथ उठाए थे जो सच्चाई थी वही लिखा है तथा यह भी स्पष्ट किया कि गुस्से में बातें चीत पोस्ट मास्टर से कर रहे थे। काशी राम ने पकड़कर बाहर किया।

श्री स्वामी दयाल तिवारी आरोपित कर्मचारी ने अपने ऊपर लगाए गए आरोपों को निराधार एवं झूठा बताया है तथा कहा कि बांगा ने मुझ पर गलत कैसा लगाया है एवं काशी राम तथा शिव प्रसाद झूठी गवाही दिए हैं। उसने आगे बताया कि वह राजेन्द्रनगर डाक्टर दिनांक 9.7.86 को श्री बांगा से 6 बजे के बाद मिले थे। श्री मोहर लाल धारिया व मूलचन्द्र शर्मा के साथ श्री बांगा ने उन्हें माँ बहन की भद्दी गालियाँ दी उसकी रिपोर्ट थाने में नहीं लिखा गई। अधिकारियों को भी लिखा था परन्तु कोई प्रमाण नहीं दे सके श्री स्वामी दयाल तिवारी के इस बयानों का उनके गवाहों द्वारा पुष्टि नहीं की गई। श्री मोहर लाल धारिया एवं मूलचन्द्र शर्मा दोनों ने ही उनके साथ बांगा से मिलने की बात को नकारा है तथा गाली की भी पुष्टि नहीं की। इस प्रकार श्री बांगा पर स्वामी दयाल का लगाया आरोप झूठा एवं निराधार है। श्री गिरजा शंकर तिवारी जो उनके साथ साथ रहे उन्होंने भी श्री मूलचन्द्र शर्मा व मोहर लाल धारिया के साथ स्वामी दयाल का दिनांक 9.7.86 को मिलने की बात की पुष्टि नहीं किया तथा उनका पोस्ट मास्टर बांगा से मिलने के कारण की भी पुष्टि नहीं की। इस प्रकार यह सिद्ध हो जाता है कि श्री स्वामी दयाल ने श्री बांगा पर झूठा आरोप लगाने का असफल प्रयास किया है ताकि उनके ऊपर लगाए आरोपों की गम्भीरता कम हो सके।

मैं अभियोजन पक्ष के इस तर्क से पूर्ण सहमत हूँ कि स्वामी दयाल तिवारी श्री बांगा से पूर्वग्राहित थे। श्री स्वामी दयाल ने अपने बयान में बताया है कि उनके विरुद्ध 12.7.85 को एक पार्लल के

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कोथेत वितरण का मानका अगस्त 85 में प्रकाश में आया था जिसमें श्री बांगा ने उनकी वार्षिक बढ़ोत्तरी रोकने का दण्डादेश दिया था। इस बेशा के बाद ही श्री बांगा के विरुद्ध कोयला बेच लेने का आइटम लिया गया था जो ईएक डी-3 दिनांक 27.1.86 को प्रवर डाक सहायक से लिया गया है। इससे श्री स्वामी दयाल तिवारी का बांगा से पूर्वग्रहित होना स्पष्ट हो जाता है।

श्री स्वामी दयाल तिवारी ने जागे कहा कि दिनांक 9.7.86 को प्रातः श्री बांगा द्वारा पारित दण्डादेश प्राप्त हुआ जिसमें उनकी वार्षिक बढ़ोत्तरी रोक दी गयी थी। इस पर श्री स्वामी दयाल का क्रोधित होना स्वाभाविक है। इसी कारण उन्होंने श्री बांगा को अपमानित करने की योजना बनायी। उसी दिन दोनों आदमी वापसी देने के पश्चात् राजेन्द्र नगर डाकघर गए और श्री स्वामी दयाल तिवारी ने श्री बांगा को चप्पल से पीटकर एवं आशिष्ट भाषा का प्रयोग करके उन्हें अपमानित किया।

बचाव पक्ष ने यह कहकर कि "अभियोजन पक्ष ने चौकीदार को गवाही में पेशा नहीं किया। वास्तव में वही प्रत्यक्ष दर्शी गवाह हो सकता था या वास्तव में कोई घटना घटी नहीं थी अतः चौकीदार को पेशा नहीं किया" अपने कार्य की इतिवृत्ति समझ ली। उन्हे चौकीदार को गवाह बनाने से रोकने रोक। बचाव पक्ष ने उसे क्यों नहीं गवाही हेतु प्रस्तुत किया। बचाव पक्ष के गवाहों एवं आरोपित दोनों कर्मचारियों ने भी दिनांक 9.7.86 को श्री बांगा एवं श्री स्वामी दयाल के बीच गर्म जाद विवाद के तथ्य को स्वीकारा है। अतः बचाव पक्ष के इस तर्क में कोई दम नहीं कि घटना घटी ही नहीं।

आरोप नं० : 2

दिनांक 9.7.86 की घटना का घटित होना सिद्ध हो जाता है जहां तक समय का प्रश्न है। श्री स्वामी दयाल तिवारी एवं श्री गिरजा रांकर तिवारी दोनों आरोपित कर्मचारियों उनके गवाही में राजेन्द्रनगर डाकघर लगभग 6 बजे आना बताया है जबकि अभियोजन पक्ष ने समय सायं 4.50 कहा है। बचाव पक्ष का यह

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कहना कि दोनों कर्मचारी अपनी वापसी 5.30 बजे के पश्चात ही आवास विकास कालोनी डाक्टर छोड़ " तथा अधिकांश वापसी 9 1/2 बजे के आस पास ही देते थे तथ्य परक नहीं प्रतीत होता क्योंकि आवास विकास कालोनी डाक्टर 5.30 बजे बन्द हो जाता है और इसी समय वापसी देना तर्कसंगत एवं सत्यता से परे है। अभियोजन पक्ष के गवाह श्री एस0एस0लाल, उप डाकपाल, आवास विकास कालोनी डाक्टर ने वापसी का समय 3 1/2 बजे बताया है जो सही एवं तर्कसंगत प्रतीत होता है। उन्होंने बताया कि 3.30 बजे वापसी देने के पश्चात दिनांक 9.7.86 को दोनों पोस्टमैन चले गए थे तथा साढ़े पाँच तक डाक्टर वापस उनको नहीं देखा था।

श्री मोहर लाल धारिया बवाव गवाह ने अपने कथान में कहा कि स्वामी दयाल एवं अन्य लोग डाक्टर आये। मैं अपना अब्स्ट्रेक्ट चेक कराने चला गया एवं अपना अब्स्ट्रेक्ट चेक करा रहा था श्री गिरजा शंकर सिमारी ने कहा है कि श्री मूल चन्द्र शर्मा बवाव गवाह तरफ लगा रहे थे। मैं श्री आर0ए0 सिंह से अपनी बैलेन्स सीट हेतु बात करने लगा। धारिया बाबू बवाव गवाह रजि0 इम्पोर्ट ब्रान्च में चले गए और अपने हाथ में कुछ रजिस्टर लेकर वापस जाते दिखायी दिए और वही कागज लेकर वापस पुनः चले गए इससे स्पष्ट है कि डाक्टर राजेन्द्र नगर में कार्य चल रहा था। अधिकांश कर्मचारी कार्यालय में कार्यरत थे उनकी ड्यूटी समाप्त नहीं हुई थी। अतः कर्मचारियों का यह कथन कि: श्री बांगा से 6 बजे के बाद मिले थे सत्य नहीं प्रतीत होता। उपरोक्त विवेक से यह स्पष्ट होता है कि घटना लगभग 5 के आसपास की है जिससे अभियोजन पक्ष का समय सिद्ध हो जाता है। अतः यह सिद्ध हो जाता है कि दोनों आरोपित कर्मचारी 3.30 से 5.30 तक अपने कार्यालय से अधिभूत रूप से अनुपस्थित रहे। इसका दोनों कर्मचारियों ने अपने उपडाकपाल से आला प्राप्त नहीं किया था जैसा कि श्री एस0 एस0लाल, उपडाकपाल के कथान से स्पष्ट हो जाता है। बवाव पक्ष भी लिखित आदेश उपडाकपाल आ0वि0 का डाक्टर का जंच के समय प्रस्तुत नहीं कर सका। इस प्रकार दिनांक 9.7.86

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को 3 1/2 से 5 1/2 बजे साथे तक अपने कार्यालय से बिना
लिखित आज्ञा प्राप्त किए अपने कार्यकाल में अनुपस्थित रहने का
आरोप सिद्ध हो जाता है।

इस प्रकार श्री स्वामी दयाल तिवारी पर लगाए गए
दोनों आरोप सिद्ध हो जाता है।

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राम लाल प्रसाद

जांच अधिकारी

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[Signature]

श्री गिरजा शंकर तिवारी, पोस्ट में के विरुद्ध लगाए गए
आरोपों की जांच की जांच आख्या

श्री स्वामी दयाल तिवारी ने कहा कि दिनांक 9.7.86 को प्रातः उन्हें श्री बांगा द्वारा पारित दण्डादेशा ईएक्स-डी-5 प्राप्त हुआ जिसमें उनकी वार्षिक बढ़ोत्तरी रोक दी गयी थी। इस पर श्री स्वामी दयाल तिवारी का क्रोधित होना स्वाभाविक है। इसी कारण उन्होंने बांगा को अपमानित करने की योजना बनायी। इसी दिन वह श्री गिरजा शंकर तिवारी के साथ वापसी देने के बाद राजेन्द्रनगर गए, लगभग 6 बजे गए थे। उसने स्वीकार किया कि छाटना के समय श्री गिरजा शंकर उनके साथ थे।

श्री गिरजा शंकर तिवारी भी अपनी परीक्षा में बताया कि वह दिनांक 9.7.86 को श्री स्वामी दयाल के साथ उपडाकदार राजेन्द्र नगर की झूटी समाप्त करके लगभग 8 बजे गए थे। उन्होंने यह भी स्वीकार किया कि 9.7.86 को श्री स्वामी दयाल तिवारी एवं बांगा के मध्य विवाद हुआ था। काशीराम ने श्री स्वामी दयाल तिवारी को धाका देकर बाहर किया। उस समय वह उपस्थित थे।

श्री ओपीओ बांगा ने अपने बयान में कहा कि दिनांक 9.7.86 को लगभग 16.40 पर दोनों आरोपित कर्मचारी डाकदार आए श्री स्वामी दयाल तिवारी थोड़ी देर बाद उनके वेम्बर में छासे एवं एक सरकारी राजस्ट्री का लिफाफा दिखाया --- श्री गिरजा शंकर तिवारी उनके वेम्बर व डेलीवरी ब्रान्च के बीच स्थित दरवाजे पर छाड़े रहे। वार्तालाप के दौरान स्वामी दयाल तिवारी उत्तेजित हो गए तथा चप्पल से पीटने लगे। इतने में गिरजा शंकर तिवारी जो दरवाजे पर छाड़े थे अन्दर जाकर स्वामी दयाल को पकड़कर कहा कि वेम्बर से बाहर जाओ जिस काम के लिए आए थे वह पूरा हो गया " इससे उनका यानी गिरजा शंकर तिवारी का उक्त प्रवृत्त्य में स्वामी दयाल तिवारी को पूरा

स्वामी दयाल तिवारी

189

18

4-11-

सहयोग दिया जाना सिद्ध हो जाता है। यदि श्री गिरजा शंकर
तिवारी जो घाटनास्थल के करीब ही छड़े थे बाहरी तो यह घटना
टल सकती थी परन्तु उन्होंने श्री स्वामी दयाल द्वारा बांगा को
चप्पल से मारने के बाद ही अन्दर गए और स्वामी दयाल को बाहर
जाने के लिए कहा। इस प्रकार वह एक सहयोगी की तरह घाटनास्थल
उप उपस्थित रहे तथा 5.30 से 5.30 तक उपडाकपाल के लिखित आदेश
प्राप्त किये बिना अधिकृत रूप से अनुपस्थित रहे यह आरोप भी
पूर्णरूपेण सिद्ध हो जाता है।

इस प्रकार दोनों कर्मचारियों पर लगाए गए आरोप सिद्ध
पाये गये।

ह0/ 1.12.88.

राम लाल प्रसाद

जोच अधिकारी

fairly
18.11

Attested copy
Signature
AM

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19

Department of posts.

From,

Senior Supdt. of Post Office,
Lucknow Division.

To,

Sri Girja Shankar Tewari,
Postman Aminabad, Lucknow.

(2) Sri Swami Dayal Tewari
Postman Aminabad,
Lucknow.

No. Camp./Misc.24/CHO/LKO. dated 18.1.1989.

Subject: Supply of copy of enquiry report.

Ref: Your application no. 11.1.89.

As desired a photostat copy of enquiry report
submitted by Sri Ram Lal Prasad E.O. in (ii) eleven
pages in sent to you.

sd/-Senior Supdt. of Post Office
Lucknow Division.

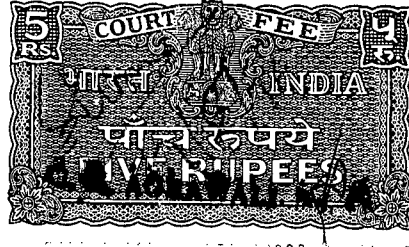
Encl. 1

Attested copy
Sharma
W.S.

ब. अदालत श्रीमान

[बादी] अपीलान्त

प्रतिवादी [रेस्पान्डेंट]



वकालतनामा

(अपीलान्त)

बनाम

प्रतिवादी (रेस्पान्डेंट)

मुकदमा नं०

सन्

पेशी की ता०

१६

ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

डी० एच० चौधरी

वकील

महोदय

एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें-वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकदमा अबम 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।

हस्ताक्षर

हामी दयानिवासी

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १९६० ई०

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15-5-91

152

M.P. No 294/91 (1)
IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

CIRCUIT BENCH LUCKNOW.

CIVIL MISC. APPLICATION NO. of 1991

Swami Dayal Tewari, aged about 44 years, Son of Late
Sri Ram Pratap Tewari, Postman, Aminabad Park Post Office
Lucknow. ... Applicant

In. Re.

O.A. No. 171/1990 (L)

Swami Dayal Tewari

Applicant

Vs.

Union of India and
others.

Opp. Parties.

APPLICATION FOR FIXING THE CASE FOR
EX PARTE FINAL HEARING.

The applicant respectfully begs to submit as
under:-

1. That, the applicant filed the above application
on 17.5.1990 against the punishment order dated
30.12.1988 to reduce salary by five stages Passed
by the Director, Postal Services, Lucknow Region Lucknow.

2. That on 19.4.1991, a date i.e. 2.7.1991 after
three months for filing counter affidavit has
again been fixed.

3. That the opposite parties have been allowed as

File today

15.5.91

21.5.91
Shri D.S. Chandra Id. C/A
did not mention fix
date

21/5-

Final order

(A53)

2.

many as eight opportunities to file counter affidavit but they have failed to avail of that opportunity.

4. That the inaction of the opposite Parties is causing un-necessary delay in the disposal of the case which further causes recurring financial hardship to the applicant.

5. That it would be expedient and necessary in the interest of justice that the case is directed to Proceed exParte and the same is finally heard and decided on 2.7.1991.

P R A Y E R

It is, therefore humbly Prayed that this Hon'ble Tribunal may graciously be Pleased to order the case to be heard finally as exParte on the date fixed i.e. 2.7.1991.

LUCKNOW, DATED :

MAY 15, 1991

APPLICANT.

D. S. Chauhan
Advocate
Counsel for
Applicant

(Signature)

154

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

MISC. APPLICATION NO. 427 OF 1991. (L) 5

On behalf Respondents.

In

Case No. O.A.No. 171 of 1990 (L)

Swami Dayal TewariApplicant.

Versus

Union of India & othersRespondents.

APPLICATION FOR CONDONATION OF DELAY

The respondents respectfully beg to submit as under :-

1. That the Counter-affidavit on behalf of the respondents could not be filed within the time allotted by the Hon'ble Tribunal on account of the fact that after receipt of the parawise comments from the respondents, the draft reply was sent to the department for vetting.
2. That the approved Counter-affidavit has been received and is being filed without any further loss of time.
3. That the delay in filing the Counter-affidavit is bonafide and not deliberate and is liable to be condoned.

WHEREFORE, it is prayed that the delay in filing the Counter affidavit may be condoned and the same may be brought on record for which the respondents shall ever remain grateful as in duty bound.

Lucknow.

Dated; 26-7-91

D. Chandra

(Dr. Dinesh Chandra)

Counsel for the Respondents.

*Filed today
26/7/91*

A55

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD

CIRCUIT BENCH LUCKNOW

COUNTER AFFIDAVIT ON BEHALF OF ALL THE RESPONDENTS

In

O.A. No 171 of 1990(L)

Swami Dayal Tiwari.....Applicant

Versus

Union of India and Others..... Respondents

I, Shri Manoj.....aged about 54 years

Son of Shri Narayan Prasad.....

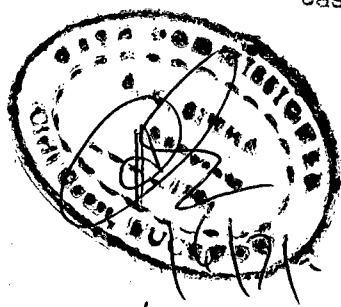
Senior Superintendent of Post Offices Lucknow do hereby solemnly affirm and state as under :-

1. That the deponent has read the application filed by Shri Swami Dayal Tiwari and has understood the contents thereof.

2. That the deponent is well conversant with the facts of the case deposited hereinafter and is filing this counter-affidavit on behalf of all the respondents.

3. That it will be worth-while to give the brief history of the case as under :-

Manoj
प्रवर मधीलक, डी.आर. विभाग
Senior Supdt. of Post Offices
Lucknow Division-26007



BRIEF HISTORY OF THE CASE

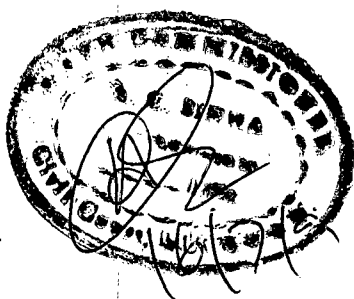
The applicant Shri Swami Dayal Tewari was served with the charge-sheet under Rule 14 of CCS (CC&A) Rv1.

(A56)

: 2 :

Memo No B/CEN/Disciplinary/86-87 dated 11.11.1986. The inquiry against the applicant was held alongwith Shri Girj Shankar Tewari in the common proceedings under Rule 18 of CCS (CC&A) Rules, 1965. The charges levelled against Shri Swami Dayal Tewari have been spelled out in Annexure R-1. The open inquiry was completed on 19.3.1988, and the inquiry report was submitted on 1.12.1988, according to which all the charges levelled against the applicant were found proved. The disciplinary authority after perusal of the inquiry report and connected documents awarded the penalty of reduction by 5 stages from Rs 900/- to Rs 825/- in the time scale of pay of Rs 825-15-900-EB-20-1200 for a period of five years wef 1.2.1989. It was further directed that Swami Dayal Tewari will not earn increments of pay during the period of reduction and that on the expiry of this period the reduction will have the effect of postponing his future increments of pay. The applicant filed an appeal on 13.2.1989 against the said punishment order ^{to} of the Director of Postal Services, Lucknow Region, Lucknow which was rejected and the penalty imposed on the applicant was confirmed vide Memo Dated 31.7.1989 which has been filed by the applicant as Annexure No 2. Feeling aggrieved by the said punishment dated 31.7.1989 which was communicated to the applicant on 16.12.1989 by vide letter dated 15.12.1988, the applicant has come before this Hon'ble Tribunal for

Handwritten signature
प्रवर अधीक्षक, डाकघर लखनऊ
Senior Supt. of Post Off.
Lucknow Division-226007



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: 3 :

quashing the impugned order of punishment dated 30.12.1988 contained in Annexure No 1 and appellate order dated 31.7.1989 contained in Annexure No 2 with consequential benefits.

PARAWISE COMMENTS

4. That the contents of paras 1 and 2 of the application need no comments.


5. That in reply to para 3 it is stated that the applicant filed by the applicant is barred by Limitation prescribed under Section 21 of the Administrative Tribunal Act of 1985. The cause of grievance had arisen on 16.12.1988 when the appellate order rejecting the applicant's appeal against the order of punishment was communicated to him vide order dated 15.12.1988.

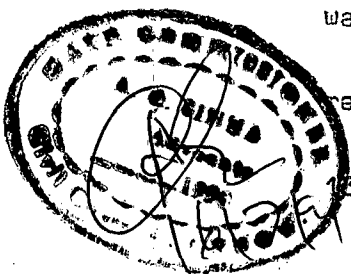
6. That the contents of paras 4.1 and 4.2 are admitted.

7. That in reply to para 4.3 it is stated that there was no instructions with the department for supplying a copy of inquiry report to the delinquent official before imposing the above punishment.

8. That the contents of para 4.4 are admitted.

9. That in reply to para 4.5 it is stated that the appeal filed by the applicant on 13.2.1989 against the order of punishment was ~~filed~~ critically considered with reference to the inquiry report and the relevant documents after which it was rejected on 13.7.1989. The rejection order was communicated by the deponent


प्रवर अधीक्षक, डाकघर, लखनऊ
Senior Supdt, of Post Offices
Lucknow Division-226007



vide his order dated 15/12/1989 which was received by the applicant on 16.12.1989.

90. That the contents of para 4.6 are admitted.

11. Contents of para 4.7 need no comments.

12. That in reply to para 4.8 it is stated that the inquiry report was based on the evidence produced before the inquiring officer wherein the charges levelled against the applicant were found proved. The punishment order was made after due consideration of the inquiry report and all the relevant documents. That a copy of the inquiry report was not furnished to the applicant before imposition of the punishment as no instructions to this effect were received by the department till the date of punishment.

13. That the contents of para 4.9 are not admitted and the submissions made in para 12 above are reiterated.


14. That comments on "Grounds for relief with legal provisions" contained in para 5 are furnished below in seriatem :-

5.1 - Contents denied. The punishment awarded has been reasoned ^{about} ~~about~~ very exhaustively in the punishment order.

5.2 - Contents denied. The applicant was given a copy of inquiry report.

5.3 - That the contents misconceived. The punishment was imposed by the Senior Supdt of Post Offices who is the higher in rank than the disciplinary authority.

.....5


प्रवर अधीक्षक, डाकघर, लखनऊ
Senior Supdt, of Post Offices
Lucknow Division-226007



(A 59)

: 5 :

5.4 - Contents denied. The charge-sheet was framed in accordance with the relevant provisions of law.

5.5 - Contents denied. The findings of the inquiring officer were based on proper assessment of the statement of Shri OP Banga and Shri Kesh Ram viz-a-viz the other facts revealed during the course of inquiry.

5.6 - Contents misconceived. The punishment was imposed taking into consideration the other facts and issues raised and decided in the inquiry report.


5.7 - Appellate order is based on proper appreciation of the inquiry report and all the relevant documents.

5.8 - Contents misconceived. The punishment awarded is in no way violative of the doctrine of double jeopardy.

15. That the contents of paras 6 and 7 need no comments.

16. That in view of the submissions made in the above paragraph the relief sought for in para 8 and interim ~~xx~~ order prayed for in para 9 are not admissible. The application lacks merit and ^{is} liable to be dismissed with costs.

17. That contents of para 10 to 12 need no comments.


प्रवर अधीक्षक, डाकघर, लखनऊ
Senior Suptt. of Post Offices
Lucknow Division-226007

Lucknow

Dated:




(Deponent)

प्रवर अधीक्षक, डाकघर, लखनऊ
Senior Supdt, of Post Offices
Lucknow Division-226007

Signed and verified this the 16th day of July 1991

प्रवर अधीक्षक, जलधर, लखनऊ
Senior Suptd, of Post Offices
Lucknow Division-226007

Dated: 16/7/8

[Signature]
(Dependant)

प्रवर अधीक्षक, डाकघर, लखनऊ
Senior Supdt. of Post Offices
Lucknow Division-226007

I, identify the deponent who
has signed before me.

D. S. S. S.
Advocate

10/1/1944
Ishu D
I Chae
AMERICAN CHURCH SIGN
GATE COMMUNITY
CIVIL COURT LER