

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 941 of 1998

this the 7th day of April 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Prahlad Dubey, S/o Shri Bhaiya Lal Ji Dubey, R/o
House No. A-38/300 Ka-3, Mohalla- Konia, Varanasi.

Applicant.

By Advocate : Sri Anand Kumar.

Versus.

1. Union of India through Chief post Master General,
Lucknow.
2. postmaster General, Allahabad.
3. Sr. Supdt. of post offices, East Division,
Varanasi.
4. Sr. Post Master, Varanasi.
5. Yogendra Kumar Sharma, C.P. Gardner, working
under Sr. post master, Varanasi.

Respondents.

By Advocate : Sri G.R. Gupta.

O R D E R

The grievance of the applicant in this case is that he was engaged as Mali for two hours daily at the residence of post Master, Varanasi, as well as post office compound @ Rs.96/- per month on temporary basis (page 14) vide letter dated 3.5.85. It is submitted by the applicant that he continued to work as such upto March '96 when the said period of two hours was raised to 4 hours vide letter dated 23.3.96 (page 15). It is submitted by the applicant that since he was being given payment of four hours, while much more time was consumed for doing all the work, therefore, he gave a representation on 30.7.97 to the Senior

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postmaster, Varanasi, requesting them to increase his working period from four hours to eight hours and also to give him the wages for 8 hours. No reply was given by the respondents and he continued to work thereafter. on 5.9.97 unfortunately, he fell sick. ^{when B.} ~~and~~ he came back and submitted his medical certificate to the authorities showing he was unwell from 5.9.97 to 7.10.97 (page 17), ~~but~~ he was not allowed to work and was orally terminated and in his place the respondent no.5 was engaged from 10.00 hours to 14.00 hours so that he could work as Gardner for four hours and next four hours as Generator Operator (page 13). Being aggrieved, applicant gave a legal notice to the respondents on 23.12.97 (page 18) requesting them to re-engage him and to make payment of his salary failing which he would have ^{to} filed a case before the Court of law. Not only, applicant requested for re-engagement, but he also annexed a letter dated 18/19.2.98 as Annexure A-7 to the O.A. to show that Asstt. postmaster (Mail) had informed the Sr. postmaster, Varanasi, stating therein clearly that Sri prahlad Dubey was the oldest employee working as Mali in the office, but he was informed by the other workers that after removing the applicant, Sri Chhangur Sharma, Generator operator got his brother engaged in his place by speaking to the postmaster and it is Sri Chhangur Sharma who is putting his signature in the attendance register in place of his brother. Accordingly, this information was given to the postmaster for taking appropriate action, but in spite of it, respondents did not take any action, therefore, finding no other remedy, the applicant had to file the present O.A. challenging the appointment of the respondent no.5 and for claiming a direction to the respondents to regularise his services as

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Mali.

2. This O.A. is opposed by the respondents who have submitted that the applicant was never terminated, but he ~~was~~ left the job on his own and since the work of the respondents was suffering, therefore, they had¹ no other option but to engage the respondent no.5 on casual basis, therefore, there is no illegality in the orders passed by the respondents. They have further submitted that the applicant did not perform his duties well and his work was also not found satisfactor which is evident from the details given by them under para 12 of the reply. They have, thus, submitted that since the applicant was very careless, dull and habitual taking leave frequently without any intimation to the respondents, therefore, he ~~is~~ not entitled for any relief as claimed by him. They have also submitted that there is no provision for granting leave to the casual workers, therefore, the respondents could not have waited for the applicant indefinitely and Sri Yogendra Kumar Sharma was engaged under unavoidable and compelling circumstances. They have, thus, submitted that there is no violation of any provision of the Constitution, therefore, application is liable to be dismissed.

3. I have heard both the counsel and perused the pleadings as well.

4. It is not disputed by the respondents that the applicant had worked as Mali from 3.5.85 to 5.9.97. Now the stand of the respondents ~~is~~ that the applicant has not been working satisfactorily, but there is no document on record to show that they had given any memo to the applicant to suggest that his work was not found satisfactory. On the contrary, in the year 1996, his period of working has been increase

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from two hours to 4 hours, therefore, this contention of the respondents that his work was not found satisfactory is not tenable in law. The question before me is whether the applicant is entitled ^{to} any relief as claimed by him. The respondents have submitted that the applicant left the job on his own and since he was not performing his duties well, they could not have waited indefinitely as he had not ~~been~~ informed the respondents about his sickness and simply absented from his duty. I would agree with the respondents on this point that the work of Mali cannot be left unattended for a long period, that too when the applicant had not ^{even} ~~been able to~~ ^{ed} inform the respondents about his so-called illness. Even otherwise, the certificate annexed by the respondents was issued on plain paper, which does not even show as to who had issued the said certificate. It also does not show that the applicant was totally bed ridden and it only says that the applicant was treated in OPD, therefore, it is clear from the applicant's own averments that he left the job on his own from 5.9.97 and in these circumstances if the respondents had engaged some-one else as Mali on casual basis, no fault can be found in the said action of the respondents and to that extent, this O.A. fails. However, there is one aspect of the matter, which requires some consideration namely letter written by APM (Mail) which shows that even the respondent no.5 has not been attending his duties and in this case his brother was marking his attendance in the Attendance Register, APM (Mail) had, therefore, requested postmaster, Varanasi, to take appropriate action. The counsel for the respondents was not in a position to inform us as to what action has been taken on the said letter. Though, it is correct that if the respondent no.5 is not attending his

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duties, it would not give any right to the applicant, but nonetheless it definitely ^{calls for} ~~cause~~ for interference by the postmaster, Varanasi, because this clearly shows that even ~~the~~ respondent no.5 is ^{also} ~~not~~ performing his duties to the satisfaction of his superiors, and if ~~be~~ ^{be} that, ^{so}, there is no justification to continue the respondent no.5, while depriving the applicant of his right to work. I, therefore, feel that interest of justice would be met in this case, if this matter is remitted back to the postmaster, Varanasi, with a direction to ascertain the facts and incase it is found that the applicant had been working with them from the year 1985 to 1997 to their satisfaction and the respondent no.5 has not been performing his duties, as stated in the letter written by the APM (Mail) (at page 19 of the O.A.) than he should pass appropriate orders keeping in view long services rendered by the applicant. This exercise shall be completed by the postmaster, Varanasi, within a period of three months from the date of communication of this order.

5. With the above direction, O.A. stands disposed off with no order as to costs.



MEMBER (J)

GIRISH/-