

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

*No
removal*

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(S)

O.A. No. 501 OF 1989.
~~MAXX~~

DATE OF DECISION 2-3-1993.

Dinakarbhai Naranbhai Rathod, Petitioner

Mr. M.D. Rana, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman.

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Dinakarbhai Naranbhai Rathod,
Serving as E.D.P.
Residing at Kharachiya (Shahid)
Kolki Taluka: Jetpur.

..... Applicant.

(Advocate: Mr. M.D.Rana)

Versus

1. Union of India
Notice to be served through
P.M.G., Opp: Income Tax,
Ahmedabad.
2. Superintendent of Post Offices,
Gondal,
Dist: Rajkot. Respondents.

(Advocate: Mr. Akil Kureshi)

JUDGMENT

O.A.No. 501 OF 1989

Date: 2-3-1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. M.D. Rana for the applicant and
Mr. Akil Kureshi for the respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by the
applicant, E.D.P., against the Postal Department
seeking the relief that the impugned order dated
15th September, 1989 passed by the second respondent
terminating the services of the applicant be quashed
and set aside and the respondents be directed to pay
the backwages from the date of termination till
reinstatement with cost and interest.

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3. The case of the applicant as pleaded in the
application is that he was inducted as EDBPM from

13th January, 1988 by the second respondent, Superintendent of Post Offices, Gondal at Kharachiya, that he has completed one year service as EDBPM, that on 3rd August, 1989 the second respondent issued a letter vide Annexure A-1 to the applicant seeking the clarification with respect to his qualification, when he made an application for the post failing which he would be removed from service. It is alleged that thereafter the respondent No.2 passed an order dated 11th September, 1989 under Rule 6 of P&T E.D.Agent Conduct and Service Rule, 1954 that the services of the applicant were terminated with immediate effect. It is this impugned order Annexure A-2, which is challenged before us in this application. It is alleged that the respondent No.2 on 20th October, 1989 sent another communication asking the applicant to give the charge, failing which he would be prosecuted criminally. According to the applicant, the impugned order Annexure A-2 dated 11th September, 1989 / the ^{though appears as} simplisitor, termination / as a matter of fact it is passed by way of punishment without holding any enquiry. It is alleged that the impugned order is violative of principles of natural justice also and in violation of Article 311(2) of the Constitution. It is also alleged by the applicant that he is a workman as defined under the I.D.Act and the respondents have retrenched him without complying with the provisions of Section 25 F of I.D. Act, which is mandatory in

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law and therefore also the impugned order is illegal and bad.

4. The respondents have filed reply contending that the Post Master General, Gujarat Circle, Ahmedabad vide his letter dated 10th December, 1987 ordered to replace the Branch Post Masters, who were also School teachers in response to the judgment of Central Administrative Tribunal in T.A. 178/86 and the present applicant was appointed purely as temporary in place of Mr. K.D. Makadia, the school teacher/ ^{who} was working as EDBPM. It is contended that the applicant's appointment was only on adhoc basis purely a temporary one. It is contended that the applicant was one of the candidates nominated by the Employment Exchange Office, Rajkot in October 1988 as per the departmental rules and he was appointed as EDBPM Kharachia after he was selected for that post and was continued on that post for regular appointment. It is contended that the information furnished by the applicant at the time of his appointment was not correct, but it was contradictory with the information furnished by the applicant before the Circle Divisional Inspector and so necessary inquiry was made to the complainant Inspector and under the circumstances the 2nd respondent, in exercise of powers conferred by Rule 6 of P&T ED Agent Conduct and Service Rules, 1964, ordered for termination of services of the applicant with immediate effect and the memo was

delivered to the applicant on 14th September, 1989,

but he did not hand over the charge to the Mail Overseer, Dhoraji, but after correspondence he handed over charge as EDBPM.

5. The respondents have contended in reply that the termination order of the applicant was only simplicitor termination and was legal and valid and the termination was not on account of any misconduct and there is no violation of any provision of law as alleged by the applicant. The respondents have denied that the respondents are an industry and the applicant a workman and they denied that Section 25 of the I.D. Act has application to the facts of the present case.

6. We have heard the learned advocates and have gone through the application and documents on record. The applicant's learned advocate urged two grounds before us at the time of hearing that the order of termination Annexure A-2 is based on alleged misconduct and it is punitive in nature though it appears innocuous because the foundation of the said order is the alleged misconduct or not revealing correct facts about the income at the time of getting the appointment.

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He submitted that the impugned order is the result of the notice Annexure A-1 dated 3rd August, 1989 alleging false information having been given by the applicant in the application for Post Master. He submitted that the termination order is a stigma on applicant that false

in the application for the post
was information given by the applicant. He submitted that
without holding such order cannot be made / inquiry against the
applicant and such order is violative of Article
311(2) of the Constitution of India. The second
ground attacking the impugned order Ann.A-2
is that the applicant joined the respondents' service
as EDBPM on 13th January, 1988 and he continuously
served it till he was terminated by the impugned order
Annexure A-2 dated 11th September, 1989, and
that the provision of I.D. Act are applicable
as the applicant was in continuous service for more
than a year with the respondents and therefore the
applicant could not be terminated without following the
provision of Section 25 of the I.D. Act which had not
been followed by the respondents and therefore the
impugned order is bad in law and deserves to be quashed
and set aside.

7. The learned advocate for the respondents
submitted that the impugned order is not by way of
punishment and it did not any charge sheet or
departmental enquiry. We would not like to go into
question this / because so far the second ground of
attack against the impugned order made by the learned
advocate for the applicant is concerned, we find much
substance in that ground. The learned advocate for
the respondents submitted that the applicant is not a
'workman' and respondents not an industry as defined
under the provision of I.D. Act and therefore, I.D. Act

is not applicable to the applicant. It is needless to refer to various decision of this Tribunal in which Postal it is held that the / department is an industry and the EDBPM working there in is a workman as defined under the provision of I.D. Act. We, therefore, hold that the provision of I.D. Act are applicable in this case. The respondents have not disputed the fact that the applicant has continuously worked from 13th January, 1988 till the date of termination vide impugned order Annexure A-2 dated 11th September, 1989 and thus he has continuously worked for more than a year with the respondents. We hold that the applicant has satisfied the conditions of Section 25B of the I.D. Act and therefore before terminating the services of the applicant, the respondents were duty bound in law to comply with the mandatory provision of Section 25 F of the I.D. Act, namely, one months' notice in writing and the compensation to be paid to the applicant under the provision of Section 25F of I.D. Act and admittedly the respondents have not followed the provision of Section 25 F of I.D. Act and hence the impugned order is bad in law and void by virtue of not following the mandatory provision of Section 25 F of the I.D. Act.

8. The respondents' learned advocate submitted that the applicant had not handed over the charge to the Mail Overseer, Dhoraji, but after correspondence the applicant had handed over the charge. The learned

(3)

advocate for the respondents submitted that they have inducted another person in place of the applicant who is serving at present ^{and} / the applicant has not joined the said EDBPM who has replaced the applicant.

9. The learned advocate for the respondents submitted that even if the Tribunal comes to the conclusion that the impugned order Annexure A-2 is bad in law and void because the same was passed in violation of Section 25F of the I.D. Act, the applicant can not be reinstated to the same post at a place where he was / holding post have because respondents / appointed another person who is holding the ^{said} post. In short, according to him, the order of the reinstatement should not be passed even if he is entitled to consequential

benefits. The learned advocate for the respondents on this point relied on the decision in Mohan Lal V/s. The Management of M/s. Bharat Electronics Ltd., AIR 1981 SC page 1253, in which the Hon'ble Supreme Court held "Where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits, namely backwages in full and other benefits". He submitted that in the instant case even if the Tribunal declares the impugned order ineffective and bad in law a declaration may be given

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that the applicant continues to be in service with all consequential benefits. He submitted that the reinstatement is not necessary in this case, if the declaration is given that the applicant continues to be in service with all consequential benefits and the other reason is given by him is that the third party which / is not joined as applicant in this case, is already replacing the applicant and therefore, it would be difficult to give the said post to the applicant. He submitted that in para-17 of the judgment the Hon'ble Supreme Court has held that if the termination of the services is *ab initio* void and inoperative, there is no question for granting reinstatement because there is no cessation of service and a mere declaration follows.

10. The learned advocate for the applicant submitted that whenever the order of termination is held bad in law or void or illegal under the provision of I.D. Act, the necessary order of reinstatement should follow and he relied on the decision in *Surendra Kumar Verma V/s. The Central Government Industrial Tribunal-cum-Labour Court, New Delhi, AIR 1981 SC page 422* and he drew our attention to para 6 of the judgment, the Hon'ble Supreme Court has observed in para 6 of the judgment as under:-

"Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excus\$ion. 'Void *ab initio*', 'invalid and

(5)

inoperative' or call it what you will, the workmen and the employer are primarily concerned with the consequence of striking down the order of termination of the services of the workmen. Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back wages too."

He submitted that if the respondents have inducted any third party replacing the applicant at the said post and worry it is their mistake / and even if the applicant ~~not~~ ^{has} challenged the appointment joined the third party in this application / order of ~~of applicant~~ reinstatement should be made.

11. We have heard the learned advocates for the parties and we have perused both the decisions cited by the advocates in the instant case. We would have certainly passed an order of reinstatement as we hold that the impugned order, Annexure A-2 is illegal, bad in law and void but the fact remains that the post where the applicant was serving before his termination ⁱⁿ is filled by the third party and the applicant has not challenged his appointment. joined that third party in this application / Even if we hold that the fault was of the respondents in inducting the third party to the post of the applicant for which the applicant ~~mixxx~~ can not be blamed the passed the reinstatement order cannot be in absence of the third party and applicant has not joined that party in not u h ~~not u h~~ / this case. There can be two persons on the same post. More over, if the order is passed in favour of the

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applicant as having been continued in service as if
there was no termination against him, ⁱⁿ In our opinion,
be at the
the applicant will not / slightest disadvantage.
the peculiar
Therefore, having regard to / facts of the case, namely
that the third party is inducted on the post where
the applicant was serving before his termination and
the applicant having not joined that party in the
present Original Application, we instead of passing an
order of reinstatement would give a declaration that
the applicant continues to be in service with all
consequential benefits. Hence we pass the following
order:

ORDER

The application is allowed. The impugned
order Annexure A-2 passed by the second respondent
dated 11th September, 1989 terminating the services
of the applicant is declared as illegal and void and
inoperative and the declaration is made that the
applicant continues to be in service with the
respondents with all consequential benefits, namely,
backwages in full and other benefits, if any. The
respondents are directed to pay backwages in full
admissible to the applicant within four months
from the date of receipt of the copy of this order.

Application is disposed of. No order as to costs.

R.C.Bhatt
(R.C.Bhatt)
Member (J)

N.V.Krishnan
2.3.83
(N.V.Krishnan)
Vice Chairman

SLC 497/8
26/10/89

Before the Central Administrative Tribunal
At Ahmedabad Bench.

Original Application No. 501 of 1989

Dinkerbhai Naranbhai Rathod. ... Applicant.

Versus.

1. Union of India and Ors. ... Opponents.

I N D E X

Sr. No.	Annex.	Particulars.	Pages.
1.		Memo	
1.		Copy of the petition	1 to 8
2.	A-1	list of Enclosures dtd. 3rd August, 1989	9
3.	A-2	Copy of the said impunged order dt. 11th Sept. 1989	10
4.	A-3	Copy of the 10th Oct. 89 handing over of charge.	11-13

Ahmedabad.

Date:- 26/10/1989 Advocate for the applicant.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD. BENCH

O.A. NO. 501 OF 1989.

Dinakarbhai Naranbhai Rathod.

Serving as E.D.P.

Residing at Kharachiya(Shahid)

Kolki Taluka: Jetpur.

... Applicant

Versus

1. Union of India

Notice to be served through ~~मुख्य~~

P.M.G. Opp: Income Tax,

Ahmedabad.

2. Superintendent of Post offices

Gondal,

Dist: Rajkot.

... Opponents

Details of Application :-

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

This application is filed against the impugned order dt. 11th September, 1989 passed by the Superintendent of Post Offices removing the applicant without following the due process of law.

(2) Jurisdiction of the Tribunal :

The subject matter of the application falls within the Jurisdiction of this Tribunal.

(3) Limitation :

The application is within the prescribed period of limitation .

(4) Facts of the Case :

4.1 This application is preferred with a view to challenging the impugned order dt. 11/9/1989 passed by the supdt. of Post Offices Gondal purporting to remove the petitioner from services/~~upto~~ ^{who} is serving as Extra Departmental Branch Post Master, without holding the departmental inquiry against the applicant. The petitioner who was inducted as such on 13-1-1988 by the second respondent/oppnent at Kharachiya. He has completed one years service as E.D.P.M. It is submitted that on 3-8-1989 the second respondent issued a letter seeking clarification with respect to the qualification when the ~~appexk gave~~ applicant gave. It is mentioned in the said letter that if the fails to make the clarification he would be removed from services. From the said notice it gives the clear impression that the applicant has submitted some false information with respect to his qualification.

4.2 It is submitted that the authority probably not satisfied with the qualification sought to terminate the services by resorting to rule 6 of the Extra Departmental conduct rules 1964. Thus the simple order in the guise is passed by resorting to rule 6 the said rule, however, is not a tall applicable in the case of the petitioner relying upon this Rule an order dt. 11/9/1989 is passed by the second respondent terminating the service of the applicant. The copy of the order dt. 11/9/1989 is annexed herewith this ANNEX: 'A-2' application and marked as Annexure: A-2'.

4.3 It is submitted that the second respondent sent another communication asking the applicant to give up the charge. If the applicant fails to give up the charge he will be prosecuted criminally. Thus the applicant was literally threatened to give up the charge, but it is submitted that the charge is still with him and such an action on the part of the authority is reprehensible. The copy of this communication dt. 19/10/1989 is annexed herewith ANN: 'A-3' this application and marked as Annexure: 'A-3' to this petition.

4.4 It is submitted that the impugned order dt. 11/9/1989 Ex-facie gives the impression of

of simple termination but in fact the said order is passed by way of punishment.

The order leaves an indible stamp of infirmity and cast stigma ~~and~~ on his character/conduct.

The said order is passed without issuing any chargesheet to the petitioner. The department has not held any inquiry and thus the applicant is deprived of the opportunity to establish his innocence. Consequently the principle of natural justice is violated. The action of the authority is based on the notice issued to him on 3.8.1989 and The authority has failed/neglected to hold departmental inquiry as contemplated under Article 311(2) and also under the rules.

It is further submitted that rule 6 under which the services are terminated is not at all attracted. Rule 6 is applicable only when there is reference to and opinion of the authority with respect to the general unsatisfactory work. The applicant in the past has not been given any cause for complained. He has all throughout the year rendered satisfactory work. He has not received any memo with respect to his work. Therefore the very applicability falls through. Alternatively it is submitted that the applicant is a part time employee who is protected within the area of the Industrial Dispute Act 1947.

He is a workman under the definition of the workman and before terminating services paid he is required to be ~~pay~~ the retrenchment compensation under section 25F I.D.Act. This provision of law is mandatory and conditions stipulated are sine quanon to be complied with. In the case of the applicant since the requirement is not undergone the action of the authority vitiates the order. It is also submitted that the action is also violative of Article 21 of the Constitution of India because it contemplates the procedure to be followed. It say that no person will be deprived of his or liberty except according to procedure established by law. The life includes livelihood. It is not near animal existence. The life can be made happy only when there is a means. The means is taken away without under going the semblance of procedure.

4.5 It is submitted that the same authority wants to save his action calls for the information by addressing a letter to the petitioner on 13/1/1989 for the appointment as E.D.B.P. The applicant submitted that the information on 20/10/1989 but though this is done and having the experience is not given the

appointment. He is not even called for interview.

5. The action

Grounds for relief with legal provisions

The impugned order of termination is merely a clock or a device by resorting to rule. It is infact a removal order for which there is no departmental inquiry. It is violative of Article 311, 14 & 16 of the Constitution. It is further in violation of Section 25 of the I.D.Act. Since after completion of 240 days he is not given any retrenchment to be or compensation.

6. The details of the remedy exhausted

The remedy is not required to be exhausted firstly because the order is ab into whci h does not precede with any inquiry and secondly the order is a simple order of termination which is ~~affixed~~ different from order. There is therefore no provision for appeal.

7. That no petition is filed or pending with respect to same subject matter.

8. Relief :

(a) To quash and set aside the impunged order dt. 15/9/1989 passed by the second respondent terminating the services of the applicant.

(b) To direct the second respondent to pay the arrears of wages from the date of termination till the applicant is reinstated with cost and interest.

9. Interim Relief :

Pending admission hearing and final disposal of this application to grant interim order restraining the respondent No.2 from implementing the said order.

10. Postal order/ demand draft.

Postal order No.

High Court branch

11. List of Enclosures Annex: Aldtd. 3rd August 1989 notice.(2) Annex;'A-2' to impunged order terminating the services dt. 11th September 1989 (3) Annex:'A-3' 19th October 1989 handing over the charge.

Ahmedabad.

Date :- 26/10/1989

In Verification

I, Dinkarbhai Naranbhai Rathod,
Aged about 20 years son of Nranbhai Rathod
serving as E.D.P.M. Kharachiya, now under
termination do hereby verify that the facts
mentione d para 1 to 10 are ture to my
knowledge and belief and I believe the same
to be true. I have not supressed any material
facts.

Verfied on 26th day of October 1989
at Ahmedaba d.

26/10/89

filed by Mr. M. Khan
Learned Advocate for Petitioners
with second set & 2 copies
copies copy served/not served to
other side

Dt. 26/10/89 Dy. Registrar C.A.T (J)
A'bad Bench

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Ann 9
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રજી. એ.ડી.

ભારતોચ ડાય વિભાગ,

શ્રી ડી.એ. ૨૧૦૧.

ગ્રા. પો.મા. ખાચરોચા વાયા કોલકો.

નંબર. રેફસ આ/વિશેષજી ખારચીયાત્રા. ૩૧૮૮૮.
ગોંલ.

વિચાર:- જ્ય ડોલોઅલ ઈ-સ્પેક્ટર ધોરાજીનાં
તા.૭.૬.૮૬ નો ખારચીયા શ્રીએ નો
તપાસણો રોપોઈ.

જ્ય ડોલોઅલ ઈ-સ્પેક્ટર ધોરાજીનો તમારો શોફોસ્મો
તપાસણો તા. ૭.૬.૮૬ તરફ તમારું ધ્યાન દોરતો જ્યાબવાનું કે
શ્રી.પો. મા. તરકીનો અરજીમાં તસ્વીરે ખોટો માહોતો આપેલ છે.
તમારા ભણતર અંગેનો માહોતો પણ ખોટો આપેલ છે.તો આવો
ખોટો માહોતો ઓપવા બદલ તમોને શ્રી પો.મા. ખારચીયા તરકીનો
ચેવામાથી શામાટે દુર ન કરવા તે અગે વિગતવાર ખુલાસો તાત્કાલિક
દિવસ વસ્તુમાં આ કશેરને મોકલો આપશો.

સહી.અવાચ્ય.

True copy
Neel Bora

Registered A.D.

Annexure "A"

True Translation -

Indian Postal Department -

Shri D. N. Rathod,
Branch Post Magster,
Khacharia via Kaulki -

Number Ref/A/Special Khacharia dt. 3/8/89.
Gondal.

Subject :- Inspection Report of dated 7/6/89 of
Sub-Divisional Inspector Dhoraji
Of Khacharia -

While drawing your attention towards Inspection Report of your Office of dated 7/6/89 from the Sub-Divisional Inspector Dhoraji, it is stated that, you have furnished false information in the application as Post Master. In case of your education also, you have given false information. So, you please send detailed explanation immediately about as to why you should not be removed from the services as Post Master Kharachia for having such given false information to this Office within three days.

True Translation
verified by me -

Sd/- Illegible.

Advocate.

Platting Court
on 14/12/92
Y.C.
14/12/

DEPARTMENT OF POSTS INDIA.

Office of the
Supt. of post offices,
Gondal Divn. Gondal-360311

Memo No. B2-25/34/W/Kharachiya/89 dtd. at Gondal the
11-9-89

In exercise of powers conferred by rule No. 6 of P&T FD Agent conduct and service rules 1964 services of Shri Dinkarrai Naranbhai Rathod EDPM Kharachia in account with Kolki 80 are hereby terminated with immediate effect.

Red

Supt. of Post Offices,
Gondal Division,
Gondal-360311

Copy forwarded for information & N/A to ...

- 1) The Postmaster Gondal 80.
- 2) The P.D. Officer. He will please take immediate action for arranging a suitable substitute vice Shri Rathod as P.D. of Kharachia on adhoc basis till permanent arrangement is not made by this office & report compliance.
- 3) The P.D. Officer.
- 4) Shri P.D. Rathod will be Kharachia, Viz. - Kolki through P.D. Mirapuri.
- 5) The P.D. Officer Gondal with reference to his letter No. 14/17/31/89 dtd. 26-8-89.

S/7) v/s e spare.

Indian Post Department -

True Translation -

Sd/- Illegible Annexure 3

Superintendent Of Post Offices,
Gondal Division, Gondal - 360 311.
Dated

To

Dinkarray Naranbhai Rathod,
Place Kharachiya, via Kaulki -

Memo No.8 BR 25/BPH/Kharachiya/89. Gondal Dt.20/10/89.

Subject :- Matter of removing from the services as
Branch Post Master Khacharia (Kaulki) -

Order for removing you from the services
has been issued vide this Office letter dt.11/9/89
under Memo Number B2-A/BPM/Kharachiya/89 which is
delivered to you on the day dated 14/9/89 through
Mail Oversear Dhoraji, and has been delivered to
you on the day dated 14/9/89 and when O.A. explained
to you about handing over charge of the Branch Office,
you have not handed over charge of Branch Office.
Thereafter, you have proceeding on leave by
handing over charge of Branch Office to your
sister. Arrangement made by you without prior
permission of leave is illegal. Therefore,
arrangement of candidate to work in your place made
by you has also not been allowed/sanctioned.

Memo written through this Office on the
above dated 11/8/89 which having been delivered
to you on the day dated 14/9/89, you are hereby
declared to have been removed from dt. 14/9/89.

ordered to
It is hereby handover charge of Branch
Office, all the records/files furniture along
with the Balance to Shri J. P. Joshi, Sub -
Divisional Inspector Dhoraji. Therefore, order
has been made to you or to your nominee to
hand over charge without dispute when at any
time Branch Officer comes to take over charge.
Or if this order shall be disregarded, then
will have to resort to taking action per force
with regret on criminal lines and for which
entire responsibility shall be yours, which
please note.

Sd/- Illegible
Superintendent Of Post Offices,
Gondal Division,
Gondal 360 311.

Copy forwarded to -

The Sub-Divisional Inspector, Dhoraji Division,
Dhoraji.

On receipt of this order, he should take over
charge of Kharachiya Branch Post Office with
the help of two panchas to be taken with him.

True Translation contd:

[3]

If handing over of charge of Branch is denied, then Panchnama in that connection be forwarded. Signature of the Post Master also be got appended, and if refuses to append signature, then necessary endorsement to that extent be made in the Panchnama and, ~~therefore~~, thereafter, you are hereby directed to open parallel Post office with zero ~~bank~~ balance. As also, to make arrangement for registering complaint in the Upleta Police Station as per Section 188 of the Code of Criminal Procedure, through the responsible PO. Necessary printed set for the parallel post office be obtained necessary materials from the Divisional Office as also to obtain such as Card, covers, stamps necessary blank forms and journal etc. Mention about having kept cash amount of the Post Office, stamps, furniture, records forms etc. in illegal possession unauthorisedly be invariably be made in complaint. Extra copy of the said order is enclosed herewith for delivering the same to the Post Master.

Shri K. N. Songaresia IDA Kharachiya via Kaulki

[4]

He is to take note to enter into transaction of
 to carry on
 postal bags as well as his duties connected with
 Branch Office from now onwards with the Sub-Divisional
 Inspector Dhoraji. If he shall commit default in
 doing so, then shall be loosing qualification /
 eligibility as Government Servant for disregarding
 this order which please note.

Sd/- Illegible

Superintendent Of Post Offices,
 Gondal Division.
 Gondal 360 311.

True Translation
 verified by me -

Advocate.

માર્ગાચારીય ટપાલ ખતું.

સાહો. અવાચય. અમે. ૩.

સુપ્રિ. ઓક પોરટ ઓફિસિયલ
ગોંલ ડોવોઝ,
ગોંલ ૩૬૦ ૩૧૧

પ્રતિશ્રી

દિનકરાય નારાધાર ૨૧૦૧૩.

મુ. ખારસોયા, વાયા. કોલકો.

મેમો નં. ૪૨-૨૫/બિપોઅમ/ખારચોયા/૮૬ ગોંલ તા. ૨૦.૧૦.૮૬.

વિષાય:- ગુન્ય પોરટ માસ્તર ખાચરોયા (કોલકો)
તરીકેનો સેવામાધ્યો દુર કરવાબાબત.

આ ઓફિસમાં તા. ૧૧.૬.૮૬ નાં પત્ર નં. ૪૨-અભોપોઅમ/
ખારચોયા/૮૬ નંબરનાં મેમાધ્યો તમોને નોકરોમાધ્યો દુર કરવાનો
ભાદેશ આપવામાં આવેલ છે. જે મેઠિલ ઓવરસોયર ધોરાજી મારકણ
તમોને તા. ૧૪.૬.૮૬ નાં રોજ ડોલોવર કરેલ છે. અને તમોને બો.ઓ.નો
ચાર્જ સોપો દેવા માટે મે. ઓ.અ. સમજાવેલ ત્યારે તમોને બો.ઓ.
નો ચાર્જ સોપેલ નથો. ત્યારબાદ તમો બો.ઓ.નો ચાર્જ તમારો
બહેનને સોપોનો ૨૪. ઉપર ઉત્તરો ગયેલ છો. ૨૪નો પૂર્વ મંજુરો
લોધા વગરનો તમોને કરેલ વ્યવસ્થા બોનકાયદેસર છે. જેથો તમોને
કરેલ તમારો ૪૦થાણે ૫૧૫ કરનારું સેદ્વારનો વ્યવસ્થા પડુસુંજુર
રાખવામાં આવેલ નથો.

ઉપરોક્ત તા. ૧૧.૬.૮૬ નાં રોજ આ કચેરો મારકણ
લખાયેલ મેમો જે તમોને તા. ૧૪.૬.૮૬ નાં રોજડોલોવર થયેલ હોય
તમોને તા. ૧૪.૬.૮૬ થો છુટા થયેલા આથી જાહેર કરવામાં
આવે છે.

જાંચ ઓફિસરો હવાલો, તમામ ૩૬૬ ૫૫૫૫ દિને
ફસિયર તથા સૌલભ સહીત સબ ડોલોઅલ ઇન્સ્પેક્ટર ધોરાજો
શ્રી પી.પો. જોશોને સોંપો દેવા બાધો ફરમાવવામાં આવે છે.
માટે ધોરાજો સબ ડોલોઅલ ઇન્સ્પેક્ટર, જ્યારે પણ બાંચ
ઓફિસરે હવાલો દેવા માટે આવેલ્યારે તમોચે અથવા તો
તમારા નોમનોચે બને તડરારે હવાલો સોંપો દેવા આદેશ
ફરમાવવામાં આવે છે. અગર આ હુકમનો જ્ઞાનર થશે તો ફોંડારો
રાહે કાયદેસર પગલાં દેવાનો દિલગારો ભરોફરજ પડશે. અને
તે માટે રણ્ણો જવાબદારો તમારો રહેશે. તેનો નોંધ કેશો.

સહી. અવાચ્ય.

સુપ્રિ. ઓફ પોસ્ટ ઓફિસોઝ
મોંલ ડોલોઅલ,

ગોંલે ૩૬૦ ૩૧૧.

કાલ રવાના:-

સબ ડોલોઅલ ઇન્સ્પેક્ટર ધોરાજો વિભાગ, ધોરાજો.

તેમણે આ હુકમ મળ્યેથો બે પંચોને સાથે લઈ
મારચીયા બાંચ પોસ્ટ ઓફિસરો હવાલો સંભળો દેવા
પ્રધનો હવાલો સોંપવાનો ઇન્કાર કરે તો તે અનુસું પંચનામું
રવાના કરવું. શ્રી પી.પો. નો પણ સહીદેવો. અને જોતે
સહી કરવાનો ઇન્કાર કરે તો તે મનલખનો જરૂરો શેરો પંચનામા
માં કરવા અને ત્યારબાદ શુંચ સૌલભથી સમાંતર પોસ્ટ ઓફિસ
નામમાં ખોલવા તમોને બાધો ફરમાવવામાં આગે છે. તેમજ
જવાબદાર શ્રી પી. મારકને અમોફોંડારો ધારાનો કલમ.
૧૮૮ પ્રમાણે ઉપદેશો. પોલોસ્ટેશનમાં ફરીયાદ નોંધાવવા
પુષ્ટં કરવો. સમાંતર પોસ્ટ ઓફિસ માટે જરૂરો છાપોનો
શેર વિભાગીય કચેરોમાથે મેળવો દેવા તેમજ કાઈ કવર, ટોકોટો,
જરૂરો કોરા ફોર્મ્સ અને જર્નલ વિગેરે જરૂરોસામબો મેળવો દેવા.

અગનિધિકૃત રોતે પોલ્ટ ઓફિસરો રોકડ રકમ ટોકોટો, ફરનોચર રેકર્ડ, ફોર્મ્સ વિગેર ગેરકાયદેસર કબજામાં રાખો મુકવા બદલનો ઉદ્દેશ ફરીયાદમાં અચુક કરવો. સદર ઓર્ડરનો વધારામાં નકલ શ્રી પો.મા. ને ડોલોવર કરવા માટે આ સાથે સામેલ છે.

શ્રીકે.અન. સોંગરેસોયા ટોકે. ખારચોયા વાયા. કોલકો.

તેમણે ટપાલ થેલોનો આપદેતેમજ જાન્ય ઓફિસ સાથે સહંખ્યાલો તેનો ફરજો રાખ ડોવોઅલ ઈ-સ્પેક્ટર ધોરાજો સાથે હક્કો વહેવાર કરવા નોંધલેવો. અગર તેમ કરવામાં કસુર કરશો તો આ હુકમનાં આપાર બદલ્યે સરકારોનોકરો તરોકેનોલાયકાત ગુમાવશે જેનો નોંધ કેશો.

સહી. અવાચ્ય.

શુપ્પો ઓફ પોસ્ટ ઓફિસોઝ
ગોંડલ ડોવોઅ,
ગોંડલ ૩૬૦ એ ૩૧૧.

Truem
msRan

Before the Central Administrative Tribunal, Ahmedabad

O. A. No. 501 / 89

D.N. Rathod

...

Applicant

Vs.

Union of India & Ors.

...

Respondents

Reply on behalf of Opponents

*Copy sent to
Applicant by Post*
JG
12-2-90

I, J. G. Rana Supdt. of Post Offices
Gondal Dist. do hereby verify and state as under in reply to the application filed by the applicant.

1. I have read the applicant and the relevant records and am conversant with the facts of the case. I do not admit such of the averments except those which are specifically admitted by me and I hereby deny the same.

2. At the Outset it is submitted that the application is mis-conceived and not maintainable at law and deserves to be rejected. The applicant has not exhausted all the available remedies available to him. It is submitted that no legal right much less a constitutional right of the applicant is violated.

3. Referring to para 1 of the application, it is submitted that the contention of the applicant are misconceived and not tenable and deserves to be rejected. The applicant has been terminated in accordance with the rules.

4. Referring to para 2 of the application, it is submitted that since the applicant has not exhausted all other remedies, the Hon. Tribunal may not and should not exercise its discretion in view of the provisions contained in Section 20 of the Act.

5. At the outset it is submitted that the post master general, Gujarat Circle, Ahmedabad, vide his letter No. staff/24.19/Court cases, dated 10-12-1987, ordered to replace the Branch Post Masters, who were also school teachers, in response to the judgement of Central Administrative Tribunal, in case No. TA/170/1986.

6. Accordingly, Shri K.D. Makadia, the school teacher of Karachia (Kolki), who was working as extra departmental Branch Post Master, was replaced by provisional and adhoc appointment of Shri Dinkarhai N. Rathod, with effect from 13-01-1988, with clear understanding that his appointment is purely a temporary and will hand over the charge to the regular selected official. A copy of his declaration (Annexure R-1) on this understanding is enclosed-

7. As per departmental rules, the Employment Exchange Officer, Rajkot, was requested to nominate the candidates. The applicant, Shri Dinkarbhai N. Rathod, was one of the candidates nominated by the Employment Exchange Officer, Rajkot, in October, 1988.

8. Shri Dinkarbhai N. Rathod was, therefore, asked to furnish the some information about his educational qualification, independent source of income, etc. The independent adequate source of income is one of the conditions for the appointment of the Extra Departmental Branch Post Master.

9. The applicant had informed the income from the partnership of cycle repairing shop. The Sarpanch had shown the 'present income' as Rs: 3,600/- per annum during 1987-88. Hence Shri D.N. Rathod, was selected for the post of Extra Departmental Branch Post Master, Kharachia (Kolki), and was continued on that post for regular appointment.

10. While~~m~~ during the course of inspection by Sub Divisional Inspector, Dhoraji, on 07-06-1989, the applicant had shown his income as Rs: 100/- per month from the agriculture labour. The said income of Rs: 100/- p. m. cannot be considered adequate for the livelihood. So, the Sub Divisional Inspector referred the matter to this office through his Inspection Report.

11. While referring to office records and the information furnished by the applicant at the time of appointment, revealed that the same was contradictory, with the information furnished by the applicant before the Sub Divisional Inspector. So, necessary enquiry was made through the Complaint Inspector of this office, which revealed that the information about independent source of income from the partnership of cycle repairing shop, was not correct. In fact, he had no independent source of income, which is the first and foremost condition as underlined in para 2(a) of DG P&T letter No. 45-22/71-SPB-1/Pen dated 04-09-1982, read with his letter No. 43-84/80-Pen dated 30-01-1981.

12. Under the circumstances, the Supdt. of Post Offices, Gondal, in exercise of powers conferred by Rule 6 of P&T ED Agent Conduct and Service Rules, 1964, ordered for termination of services of the said Shri D.N. Rathod, with immediate effect. The said memo was delivered to Shri D.N. Rathod on 14-09-1989, but the applicant did not hand over the charge to the Mail Overseer, Dhoraji. After a long correspondence, he handed over charge with disputes.

13. It is submitted that, therefore, in view of the above facts and circumstances of the case, there is no merit in the application and the same deserves to be rejected.

14. It is submitted that the applicant had sent his first ~~application~~ ^{application} on 09-01-1988, in which he had shown educational qualification Std. XI passed, but there was no indication of his own income and the source of that income. The applicant had sent his second application on 06-02-1988, for the post of Branch Post Master, Kharachia, and he has shown his income from cycle repairing work. But he had sent a certificate of income dated 31-01-1988, from the Sarpanch of Kharachia Gram Panchayat, in which the Sarpanch had stated that the applicant's income does not exceed Rs: 3,600/- for the year 1987-88. The applicant was given provisional engagement. It is submitted that it is always open for the department to verify regarding age, educational qualifications, etc. Therefore, any provisional employee is liable to be terminated if any of the facts stated by the applicant is found to be incorrect later on. On 20-04-1989, selection of the applicant was made out of 14 candidates and he was informed vide letter dated 21-04-1989, to fill up the required forms, which were sent to him. On 07-06-1989, the Sub Divisional Inspector (Postal), Dhoraji, carried out the inspection of the Kharachia Branch Office where the applicant was working. During the inspection of oral enquiry by the said officer, the applicant stated that he was studying in Std. XII and he had income of Rs: 100/- per month of his own from agricultural labour. The Sub Divisional Inspector, Dhoraji, had intimated this fact in para 1 of his Inspection Report dated 16-06-1989. It is submitted that as per the recruitment rules of the E. D., B.P.M., the candidate should have independent

adequate income. The applicant had stated orally the said officer that he was studying in Std. XII. The contention of the applicant, therefore, was misleading, which led the Superintendent of Post Offices, Kharachia Gondal, who appointed him as E.D., B.P.M., Kharachia. Therefore, the applicant was addressed a letter by the opponent no. 2 on 03-08-1989, to explain for the information about his income and also for non-mention about his continuing the studies in Std. XII. On 08-08-1989, the applicant sent his explanation wherein he inter alia stated that he was studying in Std. XII, as an outside student; but he did not offer any explanation about his own independent income. As such, he was asked by the Supdt. of Post Offices, Gondal, the respondent No. 2, vide his letter dated 16-08-1989, to send the certificate of his independent income. In that response, the applicant had sent, with his application dated 21-08-1989, the certificate of his income of the Sarpanch dated 21-08-1989. In this case the income of the applicant was shown as Rs: 3,600/-, for the year 1988-89. It is submitted that, after considering the said explanation of the applicant, his services were terminated vide memo No. B2/25/BPM/Kharachia/89 dated 11-09-1989 by the Supdt. of Post Offices, Gondal. It is submitted that the applicant was not considered eligible for the post on which he was appointed, as he did not fulfill the requisite condition of his having independent income. The said memo was served on the applicant on 14-09-1989 and he was also requested to hand over the charge. The applicant was hesitant to hand over the

charge, and also did not accept the termination order. It is submitted that the father of the applicant is a school teacher and his monthly income from the salary is Rs: 2,149/- (Rs: 26,328/- per year). The income of the applicant from the partnership of cycle firm was also incorrect. In fact, the applicant has no independent source of his income. It is submitted that, therefore, the applicant was given an opportunity to explain about his own income. The applicant did not give correct facts in his application. It is submitted that the applicant was found not fulfilling the conditions of recruitment. Therefore, his services were terminated. The said termination order is legal and valid and no interference is called for.

15. Referring to para 4 of the application, the contention of the applicant ~~that~~ are not accepted and are hereby denied. The termination of the applicant is legal and valid. It is a simplicitor termination. It is submitted that, therefore, it is not required here, to follow ~~the~~ the detailed procedure under the rules. The services of the applicant are not terminated on the grounds of any ~~misconduct~~ ~~misconduct~~ It is further submitted that ~~when the applicant had~~ ~~misconduct~~ ~~stated incorrect facts in his application, which had~~ ~~misled the authority who had appointed him to another~~ ~~any incorrect statement made by the authority~~ ~~did not constitute a mis-conduct as it was before~~ ~~notices of leave was sent to A.C.C.I. and to I.C.S. before his~~ ~~appointment. Therefore, no procedure is warra~~ ~~to a~~ ~~business case~~

It is submitted that the principle of natural justice has been violated, by seeking the explanation of the applicant. It is ~~denied~~ that there is violation of Article 14 of the Constitution of India, as alleged.

16. It is submitted that it is denied that the impugned order of termination has been passed by way of punishment as~~s~~ alleged. It is submitted that there is no stigma. It is submitted that the rule ~~16~~ prescribes for simplicitor termination. It is submitted that it is not always open for an authority to terminate the services of any employee when his appointment itself was illegal on the ground ~~as~~ that the concerned employee was not even eligible for the post in question. It is submitted that whether the applicant's work was satisfactory or not the criteria in the present case, since his appointment itself was void ab initio. It is submitted that the respondent is not an industry and the applicant is not a workman. The applicant was discharging duties as an extra departmental branch post master. The said duty is in the nature of supervisory or managerial fashion. It is further submitted that the Industrial Disputes Act does not apply in this case. The applicant is not governed by the provisions of the Industrial Disputes Act. He is governed by the Extra Departmental Agents Rules. It is denied that Section 25-F of the I.D. Act has any application in the facts of the present case.

17. It is denied that the impugned action is also violative of Article 21 of the Constitution of India as alleged. It is submitted that the applicant was given an opportunity to clarify the position and in the said notice the applicant was also informed about stating incorrect facts in his application.

18. That the other averments and contentions of the applicant are not admitted and are hereby denied. It is submitted that the grievance of the applicant that the applicant was not called for the interview has no relevance and the said contention is devoid of any merits.

19. Referring to para 5 of the application, it is denied that the impugned order of termination is merely a cloak or a device as alleged. It is submitted that it is the simplicitor order of termination and not for removal. For the same reason is given incorrect facts in the application. It is not a mis-conduct and, therefore, no punishment can be made to the applicant. It is denied that the impugned action is violative of Articles 311, 14 and 16 of the Constitution of India as alleged.

20. Referring to para 6 of the application, it is submitted that against the impugned order of termination of the services of the applicant, ~~appeal~~ passed by the Supdt. of Post Offices, Gondal, appeal

lies to the Director of Postal Services, Rajkot. The applicant has not exhausted the said remedy. Therefore, also the application deserves to be rejected.

21. Referring to para 8 of the application, it is submitted that the applicant is not entitled to any relief as prayed for and the application deserves to be rejected.

6/2/90

Verification.

JG Rana
---(JG RANA)
Suptt. of Post Offices
Rajkot Distt.
Gondal Division,
New Gondal - 360 311

I, J G Rana Suptt. of Post Offices do hereby
second on.
verify and state that what has been stated herein-
above is true to my knowledge and belief.

6/2/90

JG Rana
---(JG RANA)
Suptt. of Post Offices
Rajkot Distt.
Gondal Division,
New Gondal - 360 311

Reply/Rejoinder/written submissions
filed by Mr. *J. D. Ajmera*,
learned advocate for petitioner/
Respondent with second set.
Copy served/not served & other side

13/2/90
Dy. Registrar C.A. 13/2/90
A'bad Bench