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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

*ND  
Termination*

O.A. No. 429 OF 1990.  
XXXXX

DATE OF DECISION 23.3.1993

Shri Mahesh S. Makwana, Petitioner

Mr. P.H. Pathak, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent(s)

Mr. Mukesh Patel for Mr. Jayant Patel Advocate for the Respondent(s)

**CORAM :**

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

The Hon'ble Mr. V. Radhakrishnan, Admin. 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 ?	✗

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Shri Mahesh S. Makwana,  
13, Kismatnagar Society,  
Behind Sarda High School,  
Last Bus Stand of Kalapinagar,  
Meghaninagar, Ahmedabad. .... Applicant.

(Advocate: Mr. P.H. Pathak)

Versus.

1. The Post Master General  
Office of the Post Master General,  
Ashram Road, Navrangpura,  
Ahmedabad.
2. Shri G.N. Paunikar,  
Medical Officer Incharge,  
P & T Dispensary,  
Usmanpura, Ahmedabad.
3. The Union of India,  
Post and Telegraph Department,  
New Delhi. .... Respondents.

(Advocate: Mr. Mukesh Patel for  
Mr. Jayant Patel)

ORAL ORDER

O.A.No. 429/1990

Date: 23.3.1993.

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

Heard Mr. P.H. Pathak, learned advocate for  
the applicant and Mr. Mukesh Patel for Mr. Jayant  
Patel, learned advocate for the respondents.

2. This application under section 19 of the  
Administrative Tribunals Act, 1985, is filed by a  
Class IV servant, serving with the Postal Department,  
seeking the relief that the verbal termination order  
dated 16th October, 1990 passed by the respondents  
be declared as illegal and void and the respondents  
be directed to regularise the services of the  
applicant and also be directed to pay the arrears.



3. The case of the applicant as pleaded in the application is that the applicant was inducted in service in June 1986 at Usmanpura Post and Telegraph Dispensary as Nursing Orderly in Grade 'D' cadre and since then he is serving there as such continuously without any break. Initially the applicant worked from June 1986 to 16th April, 1987 vice one Shri R.M. Parmar as a Nursing Orderly. The applicant was paid Rs. 10.40 per day and thereafter Rs. 13.10 per day during this period. Thereafter, the applicant since May 1987 on a clear vacant post of Nursing Orderly is working. It is the case of the applicant that in the year 1988, the applicant has been posted in the regular pay scale of Rs. 750-940 with dearness allowance, house rent allowance and city local allowance. The applicant has produced collectively at Annexure A-1 the copies of pay orders. The applicant has alleged that he has been appointed by respondent No.1 and the respondent No.2 has no authority in law either to prevent or to terminate his services. The applicant has categorically pleaded in the application that he has served continuously without any break on a permanent post for more than 240 days in each year.

4. The case of the applicant is that on 16th October, 1990 the respondents verbally terminated his services in violation of the provisions of the I.D. Act. The applicant has given many other details in the application which are not relevant to decide this case.

5. The respondents have filed reply contending that the applicant was engaged for sprinkling water on part time hourly basis with effect from 23rd April, 1986 in P & T Dispensary, Usmanpura, that the applicant was engaged as outsider substitute on the vacant post of Nursing Orderly with effect from 16th June, 1986. It is not disputed by the respondents that the applicant was engaged on vacant post. The contention of the respondents is that the applicant has studied upto 6th Standard and his birth date is 11th October, 1960 and has no experience in the medical institution and therefore, he was not eligible for ~~the~~ being appointed even on the date of his engagement as Nursing Orderly. It is contended that the name of the applicant is not sponsored by the employment exchange. The respondents have contended in the reply that they have produced the copy of the relevant portion of the recruitment rules at Annexure R-1 but we don't find any such Annexure R-1 in the file. The respondents have also referred to another two Annexures R-2 & R-3 but they are also not found in the file. The respondents have contended that the applicant was not regular permanent employee of the department and as it was possible to manage the work without engagement of the outsider substitute like applicant, it was decided not to engage the applicant as the outsider substitute with effect from 16th October, 1990 and therefore,

the decision of the respondents not to engage the applicant was quite legal and proper. It is admitted by the respondents in reply that the applicant worked as outsider substitute until the date of this continuation of his engagement.

6. We have heard the learned advocates. It is not disputed before us that the applicant had put in a year in the work for more than 240 days with the respondents department before the oral termination was given to him on 16th October, 1990. The question is whether the applicant is a workman and the respondents an industry. The applicant was working in the Post & Telegraph Dispensary and therefore, in our opinion it is an industry and the applicant was a workmen.

7. If the respondents thought that they could proceed with the work without continuing engagement further the applicant though ought to have followed the legal procedure of terminating the services of the applicant and not by way of oral termination, which is done by them. The applicant being governed under the provision of the Industrial Disputes Act and he having put more than 240 days in a year prior to the date of his oral termination, it was mandatory on the part of the respondents to serve him notice with the retrenchment compensation under section 25F of I D Act but the respondents have not chosen to follow

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the said procedure and have orally terminated his services. In our opinion this act on the part of the respondents is illegal and hence the order of oral termination passed by the respondents shall have to be quashed and set aside and the applicant shall have to be reinstated in service with backwages. Hence we pass the following order:

O R D E R

The application is allowed. The oral order of termination passed by the respondents is quashed and set aside and the respondents are directed to reinstate the applicant in service within two months from the date of the receipt of the order of this Tribunal. They are also directed to pay the backwages of the applicant from 16th October, 1990 till the date of reinstatement as per the rules admissible to the applicant less the amount earned by the applicant from his gainful employment during his service. The applicant would be entitled to the benefit of continuity of service. The applicant may make a representation for regularisation of his service as per the rules applicable to him and that may be considered by the respondents department within three months from the receipt of the representation. The application is disposed of with no order as to costs.

  
(V. Radhakrishnan)  
Member (A)

  
(R.C. Bhatt)  
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

OA/429/90

of 19

Transfer application No.

Old Write Pet. No. ....

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated: 30/04/93

Countersigned.

Section Officer/Court Officer.

*R.S.Christian*  
Signature of the Dealing  
Assistant.

MGIPRRND—17 CAT/86—T. S. App.—30-10-1986—150 Pads.

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD

Application No. OA/429/90 of 199

Transfer Application No. \_\_\_\_\_ Old Writ Pet. NO. \_\_\_\_\_

C E R T I F I C A T E

Certified that no further action is required to be taken  
and the case is fit for consignment to the ~~Recd~~ room (Decided).

Dated : 28/10/93

Counter signed :

Antar (1118)  
Section Officer/Court Officer

Sign. of the dealing Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AT AHMEDABAD BRANCH

INDEX SHEET

CAUSE TITLE 09/429/90 OF #9

NAMES OF THE PARTIES Mr. M. S. Nakawari

## VERSUS

U. of I. 808.

PART A B & C

SR. NO.	DESCRIPTION OF DOCUMENTS	PAGE
1.	Application.	1 to 24.
2.	Written Reply.	25 to 28.
3.	Rejoinder.	29 to 31.
4.	Oral Order dtd. 23/03/93.	
5.	MA/429/93 (Extension of time)	43 to 50.
6.	Order dt- 20/10/93	

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE \_\_\_\_\_ OF \$19 .

NAMES OF THE PARTIES \_\_\_\_\_

## VERSUS

PART A B & C

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

Submitted ;

C.A.T./JUDICIAL SECTION.

Original Petition No.: 2429 of 1990.

Miscellaneous Petition No.: \_\_\_\_\_ of \_\_\_\_\_.

Shri M. S. Makwana Petitioner(s).  
Versus.

The P.M.G. Engineers Respondent(s).

This application has been submitted to the Tribunal by

Shri R. C. Patel

Under Section 19 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunals Act, 1985 and Central Administrative Tribunals ( Procedure ) Rules, 1985.

The Application has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant may be advised to rectify the same within 21 days/draft letter is placed below for signature.

Asstt. : Paging is not done.

S.O.(J). : Documents are not marked.

Dy. R.(J). : ~~Original~~ order not attached.

We may inform accordingly.

We may put up for orders by

any ~~order~~ as mentioned before

GAC/7690/-23/10

ASSTT

S.O.

Bench

directed

24/10/90

1135 A.M. P. 23/10/20

23/10/20

## CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

APPLICANT (S)

M. S. Makwana.

RESPONDENT(S)

The P.M.G. Et al.

PARTICULARS TO BE EXAMINEDENDORSEMENT AS TO  
RESULT OF EXAMINATION

1. Is the application competent ?	yes
2. (A) Is the application in the prescribed form ?	yes
(B) Is the application in paper book form ?	yes
(C) Have prescribed number complete sets of the application been filed ?	
3. Is the application in time ? If not, by how many days is it beyond time ? Has sufficient cause for not making the application in time stated ?	yes ✓ ✓
4. Has the document of authorisation/ Vakalat Nama been filed ?	yes
5. Is the application accompanied by D.D./I.P.O. for Rs.50/-? Number <del>fax</del> of D.D./I.P.O. to be recorded.	
6. Has the copy/copies of the order(s) against which the application is made, been filed.?	no (verbal order)
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 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 has been filed and has the paging been done properly ?	<del>yes</del> No.

PARTICULARS TO BE EXAMINED.

ENDORSEMENT TO BE RESULT  
OF EXAMINATION.

9. Have the chronological details of representations 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 the Tribunal? *No*

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  
No. \_\_\_\_\_ Page Nos. \_\_\_\_\_ ?  
(d) Distinctly Typed?

13. Have full size envelopes bearing full address of the respondents been filed? *No*

14. Are the given addressed, the registered addressed? *yes*

15. Do the names of the parties stated in the copies, tally with Name(s) ~~now~~ those indicated in the application? *yes*

16. Are the transactions certified to be true or supported by an affidavit affirming that ~~any~~ they are true?

17. Are the facts for the cases mentioned under 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?

18. Have the particulars for interim order prayed for, stated with reasons? *yes*

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH.

ORIGINAL APPLICATION NO. 2129 OF 1990.

BETWEEN

Shri Mahesh S. Makwana ..... APPLICANT.

AND

The Post Master General,

Ahmedabad and others ..... RESPONDENTS.

INDEX

S.No.	Particulars	No. of pages.
A.	Memo of Application.	1 to 25.
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A/2.	Copy of the Order.	— 37 to 38
A/3.	Copy of the oral order dt. 8-11-1989.	— 38 —
A/4.	Copy of the Letter dt. 16-10-90.	— 40 —

Substantive  
objection if any  
Certified  
C.G.S.C.  
23/10/90

R.C. Pathak  
M.H. Shaikh  
Advocate of  
the APPLICANT

Retd  
RJD

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH\*

ORIGINAL APPLICATION NO. 429 OF 1990.

BETWEEN

Shri MAHESH S.MAKWANA,  
13, Kismatnagar Society,  
Behind Sarda High School,  
Last Bus Stand of Kalapinagar,  
Meghaninagar, Ahmedabad .....PETITIONER.

Versus.

(1) THE POST MASTER GENERAL

Office of the Post Master,  
General, Ashram Road, Navrangpura,  
Ahmedabad. 380 009.

(2) SHRI G.N.PAUNIKAR,

Medical Officer Incharge,  
P & T. Dispensary, Usmanpura,  
Ahmedabad.

(3) THE UNION OF INDIA,

Post and Telegraph Department,  
New Delhi ..... RESPONDENTS.

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DETAILS OF APPLICATION

(1) PARTICULARS OF THE APPLICANT

(i) Name of the Applicant: Shri Mahesh S. Makwana.  
(ii) Name of Father : Mr. Somabhai Bhagabhai  
(iii) Designation and office in which Employed :

Nursing Orderly in Post & Telegraph Dispensary,  
Usmanpura.

(iv) Office Address : Post & Telegraph Dispensary,  
Usmanpura, Ahmedabad.

(v) Address for service of all Notices :

C/o X. M. H. Shaikh, Advocate,  
Press Kandar Sangh,  
Prarthana Samaj, Raikhad,  
Ahmedabad.1.

(2) PARTICULARS OF RESPONDENTS :

(A) RESPONDENT NO.1.

(i) Name and/or Designation of the  
Respondent :-  
The Post Master General, Gujarat Circle.

(ii) Office address of the Respondent :  
The Post Master General, Gujarat Circle,  
Ahmedabad.9.

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(iii) Address for Service of all Notices :

The Post Master General, Gujarat Circle,  
Navrangpura, Ahmedabad.9.

(B) RESPONDENT NO. 2.

(i) Name and/or Designation of the  
Respondent :

Medical Officer Incharge,  
P & T. Dispensary,  
Usmanpura,  
Ahmedabad.

(ii) Office address of the Respondent :

P & T. Dispensary,  
Usmanpura, Ahmedabad.14.

(iii) Address for Service of all Notices L

Medical Officer Incharge,  
P & T. Dispensary,  
Usmanpura, Ahmedabad.14.

(C) RESPONDENT NO. 3.

(i) Name and/or Designation of the Respondent:  
Union of India,  
Department of Posts,  
New Delhi.

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(ii) Office Address of the Respondent:

The Union of India,  
Department of Posts, Ministry of  
Communication, NEW DELHI.

(iii) Address for Service of all Notices :

The Union of India,  
Department of Posts,  
Ministry of Communication,  
New Delhi.

(3) PARTICULARS OF THE ORDER AGAINST WHICH  
APPLICATION IS MADE :

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The application is against the following order :

(i) Order No.: Verbal Order dt. 16-10-90.

(ii) Subject in brief:- Verbal Order of termination  
of Services of the applicant.

(4) JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter  
of the order against which he wants redressal is  
within the Jurisdiction of this Tribunal.

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**(5) L I M I T A T I O N :**

Applicant further declares that application is within the limitation prescribed in Sec. 21 of the Administration Tribunal's Act, 1985.

**(6) F A C T S O F T H E C A S E :**

(1) The applicant herein, a class IV Nursing Orderly, hardly paid Rs.1150/- per month in Grade "D" cadre of P & T. Dispensary was inducted in service in June, 1986 at Usmanpura Post and Telegraph Dispensary and since then he is serving there as such continuously without any break on a permanent vacant post. The applicant is a Scheduled caste employee hailing from derelected and down-trodden people with a large number of family to look after and being a sole bread earner of his family. The applicant, though beyond his reach has been constrained to file this application Petition second time challenging the illegal,

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unconstitutional arbitrary, malafide, vindictive  
-actions on the part of the Respondents herein.

The present Application is being filed under -

Article 226 of the Constitution of India invoking  
the inherent and extraordinary powers of the  
Honourable Central Administrative Tribunal  
for the protection of his fundamental rights  
guaranteed under the Article 14 and 16 of the  
Constitution of India, as well as other rights  
conferred under various labour Legislations.

(2).. Initially the applicant worked from  
June, 1986 to 16-4-1987 vice one Shri R.M. Parmar  
as a Nursing Orderly. The applicant was paid  
Rs 10.50 per day, thereafter Rs.13.10 per day,  
during this period, and the applicant was  
exploited. It is submitted that the said R.M.  
Parmar did not turn up and therefore, his services  
were terminated and since May, 1987 on a clear

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vacant post of Nursing Orderly till day, the applicant is serving without any break in service. However, it is pertinent to note that his wages per day were increased from 13.10 np. to Rs.14.60np and thereafter in the year, 1988, he has been posted in the regular pay scale of Rs.750-900<sup>4</sup> with dearness allowance; house rent allowance and city local allowance. Except the above benefits the applicant is not given the benefits of sick leave, medical allowance, increment benefits, other leave benefits viz. casual leave, leave travel concession etc.etc. Thus the statutory rights conferred under the law are also not being paid nor given to the applicant. Annexed herewith and marked as Annexure "A"1 to the petition collectively are copies of such pay orders. The Applicant submits that he has been appointed by Respondent No.(1) and Respondent No.(2) has no authority in law either to prevent or to terminate

ANNEX. "A/1"

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his services. It is submitted that with a view to exploit the applicant, pay order every months were issued for the payment of the salary of the previous month. Only recently in 1989, February, onwards the applicant is given paid weekly off that too at the whim of the respondents herein.

The pay orders are made in such a way so as to create evidence on paper that the applicant has served for particular number of days only. But the fact is that the applicant has served continuously without any break on a permanent post for more than 240 days in each year. It is submitted that even national holidays and festival holidays were cut off and were not paid to the applicant. The applicant had to go on leave when required without wages. Even half a day's casual leave if he had to put, his salary for half a day was cut off. These facts are deliberately not mentioned by the - Respondents in the pay orders, so as to create

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evidence on paper that there was a break in his service, but the fact is otherwise. The applicant was serving continuously and even these days of holidays, viz. festival holidays, weekly offs etc. are calculated and added, then each year his presence would go to show that he has worked more than 240 days in a year. Thus the applicant's services cannot be dispensed with without following due process of law. It is submitted that the applicant though described on paper in the pay order as "outsider", in fact is not an outsider, but is a permanent employee, working on a permanent post, on a permanent nature of work under respondent No. (2) at - Usmanpura Posts and Telegraph Department - Dispensary.

(3) .. That the Honourable Supreme Court of India has in the case of Bhartiya Dak Tar

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Munch V/s. Union of India, reported in 1987

in Judgment to-day, has held that those who have completed 360 days as a work-charge of daily Wager should be confirmed in their posts or the services should be regularised. The applicant is serving in the Department since 1986. The applicant has completed more than 360 days and therefore applicant is entitled to make permanent on the post of Nursing Orderly and his services are also required to be - regularised.

(4).. The applicant further submits that last year i.e in October, 1989, his services were to be terminated as per the direction of Respondent No.(1), therefore, the petitioner had filed the application before the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad which was numbered as 462 of 1989, wherein on 27th October,

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1989, the order of restraining the respondents  
-herein from terminating services of applicant  
would be passed. Annexed herewith and marked as

ANNEX. "A/2"

Annexure "A/2 to the petition is a copy of the  
said order. After issuance of such order the  
applicant was not permitted to resume the duties  
and therefore, the applicant was once again forced  
to rush to the office of the Central Administrative  
Tribunal, for direct service to the Respondent No.

(2) and after the service of the said notice, he  
was permitted to resume the duties on 3--11--1989.

Therefore, the applicant preferred the contempt  
Application under Rule 5 of the Central Administra-  
tive Tribunal (Contempt of Court) Rule, 1986. On

8--11--1989 after hearing the advocate for both the  
parties the Honourable Tribunal, Ahmedabad Bench,

Ahmedabad, passed an oral order which is annexed

ANNEX. "A/3" herewith and marked as Annexure "A/3" to the  
petition. The advocate for the respondents

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Shri J.S.Yadav for Shri J.D.Ajmera submitted that there is no order of termination passed and there is no reasonable basis for apprehension until the orders are legally passed. Therefore, this Honourable Tribunal reserved liberty to the applicant stating that as and when such orders are passed the applicant can challenge the same. And accordingly, application of the applicant was disposed off. By virtue of that order the applicant was continued till 16--10-1990.

(5).. It is further submitted that in the Respondents' Dispensary other Nursing Orderly are serving and they are given the benefits of increment, all kinds of leave and all other benefits. The applicant though doing the same kind of work, holding the same post, has been denied equal pay and equal benefit for the equal works done by him. Thus he has been discriminated in the matters of employment in utter disregard to his fundamental rights

guaranteed under Articles 14 and 16 of the Constitution of India. It is submitted that the provisions of I.D. Act, 1947, Bombay Shops and Establishment Act are also applicable to the Respondents and they are conditions of service. It is submitted that no notice or notice pay in lieu of notice has been given to the applicant before terminating his services. Therefore the impugned order is contrary to law, void ab initio.

(6).. It is submitted that every time the Respondents are bent upon to spoil Diwali Festival of the applicant and bring Holi at his Home sheer out of personal vendetta. This time also respondent No. 2 has terminated orally the services of the applicant from 16--10--90 and applicant is neither permitted to sign Muster Roll nor permitted to perform the duties of Nursing Orderly. It is

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It is submitted that applicant is daily - reporting for duty but he has not been given work nor is he been permitted to mark presence. since 16th October, 1990. It is submitted that when applicant asked respondent No.2 about such mal-treatment the respondent No.2 orally told that at the behest of Respondent No.1 the services are terminated verbally with effect from 16-10-90. The applicant demanded such order in writing and reasons thereof. The applicant is denied and told that nothing will be given to you. Applicant submits that the post on which the applicant was serving is still subsisting and is vacant, and there is no reason to not to permit him to work, Under the the oral instructions of Respondent No.1. Thus Respondents are acting arbitrarily, high-handedly, in a cavalier manner ,in utter disregard to the mandatory and statutory provisions of law and against the fundamental rights of the applicant.

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(7).. That Schedule 5 to the Industrial Disputes Act, 1947 provides provisions for unfair labour practice on the part of the Employer. Time out of number Hon. Supreme Court of India has pronounced that Govt. should be a Model Employer and not to be an ~~exploiter~~. Inspite of the repeated observations and directions of the Hon. Supreme Court, the poor workmen like applicant are exploited day-in and day-out. The applicant has protested by letter dated 16--10--90 which respondents have received but neither the respondents have replied the same nor complied with the request made therein by the applicant. Annexed hereto and marked Annexure A/4 is a copy of the said ~~order~~ letter.

(8).. The Respondents have not issued any termination order in writing till to-day and the conduct of the respondent shows that they have orally terminated the services of the

ANNEX. A/4

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Replicant which action is malafide, arbitrary,  
vindictive in nature, violative of Article 14,  
16 of the Constitution of India and violative  
of Sec. 25 F,G,H of I.D. Act alongwith I.D. Rules,  
1977.

(9).. It is submitted that post and Telegraph  
Department is an Industry. It is submitted that  
Bombay Shops and Establishnent Act are applicable  
to it. Before terminating the services of the  
applicant one month's clear notice under Sec.66(1)(b)  
of the said Act is required to be given to the  
applicant. In the present case no such notice or  
notice pay in lieu of notice has been given to  
the applicant. Therefore the verbal order of  
termination is void ab initio. It is submitted  
that no order in writing for termination is  
passed nor communicated to the applicant. Assuming  
for the sake of argument such an order is passed  
then also it will tantamount to an illegal order

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being contrary to Sec. 25(F)(g), (h) of I. D. Act as well as contrary to Sec. 66(1)(b) of Bombay Shops and Establishment Act and therefore void, ab-initio. In the above premises the applicant has prayed interim relief in this application restraining respondents herein from not permitting to ~~make~~ mark presence and from not permitting to resume duty.

(10).. It is submitted that the applicant was doing the work of permanent nature. He has been placed in the Scale of Rs. 750 to 900 with D. A. H. R. A., C.L.A. only but no other allowances or benefits as are given to others similarly situated employees are given to him. though he is holding the same post doing the same work. Therefore he has been discriminated for no reason in matters of employment in clear violation of Article 14,16 of Constitution of India. The

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The applicant is entitled to equal pay for equal work. After the decision of the <sup>Hon.</sup> Supreme Court of India the Respondents ought to have regularised the services of the applicant and by not doing so they are acting contrary to the mandate given by the Supreme Court.

(11).. It is submitted that the applicant has filed the present application in this Honourable Tribunal to-day and the issues raised by the applicant will be required to be decided and it will take time and in the mean while the applicant is required to be protected for the following reasons:-

(i) that the respondents have assured this Honourable Tribunal last year in O.A.No. 462/89 that whenever they will have to dispense with the services of the applicant, they will pass necessary orders in accordance with law. The facts of this case shows that

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they have acted contrary to the undertaking given to this Honourable Tribunal. Therefore the applicant is deemed to be continued in service unless and until written legal orders are passed by the Competent Authority of the Respondent.

(ii) Looking to the above facts and circumstances the Balance of Convenience is in favour of the applicant this wise also because no irreparable loss much less any economic loss or any administrative inconvenience will arise if the applicant is kept continued in service but once the applicant is not granted the interim relief as prayed for then the applicant will be put to a great loss, economic, hardship, humiliation etc. which cannot be computed in terms of money.

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(iii) The applicant has prima facie case and balance of convenience in his favour.

Therefore the applicant is required to be protected by way of an ad-interim ex-parte relief as prayed for hereinafter.

The applicant submits that this being a fit case, the Honourable & Tribunal may exercise its inherent and extraordinary powers.

(7) RELIEF(S) SOUGHT :

The applicant prays for following -  
reliefs:--

(i) This Honourable Tribunal will be pleased to set aside the impugned verbal termination order dated 16--10--90 and declare that the impugned order of termination is illegal, void and inoperative in law and be pleased

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to direct the Respondents to regularise  
the services of the applicant and direct  
to pay the arrears of equal pay for equal  
work with 18 % interest.

(B) The Honourable Tribunal will be pleased to  
pass any other order/directions to the  
Respondents which it deem fit and necessary  
in the interest of justice.

(8) INTERIM RELIEF PRAYED :

(A) Be pleased to direct the Respondents  
by way of an ad-interim relief that  
the Respondents or their servants or  
their agents or person or persons forming  
part of the respondents' management herein  
to not to restrain the applicant from  
resuming his duties and further direct  
the Respondents to allow the applicant to

:: 22 ::

resume his duties regularly, pending admission, hearing and final disposal of this Application. And also direct the Respondents to not to implement the - impugned verbal order of termination dated 16--10--90 pendente-lite.

(9) DETAILS OF THE REMEDIES EXHAUSTED :

The applicant declares that there is no remedy available to stay the execution of the impugned order and there is no provision to challenge the legality of the impugned order and therefore the present Application.

(10) MATTER NOT PENDING WITH ANY OTHER COURT ETC.

The applicant further declares that the - matter regarding this application is filed has not been pending before any other Court or

(TB)  
27

:: 23 ::

Authority or any other Bench of this Honourable  
Tribunal.

(11) PARTICULARS OF POSTAL ORDER :

(i) Name of the Post

Office : G.P.O., Ahmedabad.

(ii) Date of issuing the

Postal Order : 22.10.1990.

(iii) Post Office at which

payable : Ahmedabad.

(iv) No. of Postal Order : DD 382516  
6

(12) The applicant craves leave to add, alter

amend or rescind in the Memo of this -

Application as and when necessary by the

Leave of this Honourable Tribunal.

AND FOR THIS ACT OF KINDNESS AND JUSTICE

THE APPLICANT AS IN DUTY BOUND SHALL FOR EVER

PRAY.

:: 24 ::

VERIFICATION

I, Shri Mahesh S. Makwana, s/o. Somabhai

Makwana, aged about 29 years, resident of 13,  
Kismatnagar Society, Behind Sarda High School,  
Last Bus Stand of Kalapinagar, Meghaninagar,  
Ahmedabad, do hereby verify that the contents  
from paragraphs 1 to 12 are true to my personal  
knowledge and belief and that I have not suppressed  
any material facts.

Place: Ahmedabad.

Date: 23-10-1990.

31221 2A21 310591  
SIGNATURE OF THE APPLICANT.

R. C. Patelk  
Filed by Mr.....  
Learned Advocate for Petitioners  
with second set &..... spares  
copies copy served/not served to  
other side  
Dt. 23/10/90 Dy. Registrar C.A.T.(J)  
A'bad Bench

IC/BSaw  
23/10/90

1617186  
m/s/m

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DEPARTMENT OF POSTS: INDIA:  
(MINISTRY OF COMMUNICATIONS)  
O/O THE POSTMASTER GENERAL: GUJARAT CIRCLE: AHMEDABAD-9.

Memo. No. Staff-20-1/Misc/Disp/II dated at Ahd-9, the 15-7-86.

Sanction of the Postmaster General, Gujarat Circle, Ahmedabad-9 is hereby accorded for payment of amount mentioned below to the engagement of the following outsiders substitute in Gr.'D' cadre in the P&T Dispensaries at Ahmedabad as mentioned below on daily wage basis during the month of June-1986.

Sl. No.	Name of the outsider.	Vice whome engaged.	No. of days in month	Rate per day.	Amount payable the month
1.	2.	3.	4.	5.	6.
1.	Shri M.C.Solanki P&T Disp. Maninagar.	Vacant post of Sweeper	24	10-40	249-60
2.	Shri N.C.Vaghela P&T Disp. Usmanpura.	Vacant post of Chowkidar	24	15-60	374-40
3.	Smt. T.H.Dave P&T Disp. Usmanpura.	Vacant post of F/A	18	10-40	187-20
4.	Smt. S.R.Parmar P&T Disp. Usmanpura.	Vacant post of Sweeper	23½	10-40	244-40
5.	Shri I.F.Shaikh P&T Disp. Laldarwaja	Vacant post of Peon.	23½	10-40	244-40
6.	Shri M.S.Makwana P&T Disp. Usmanpura	Vice Shri R.M.Parmar Nurssing orderly.	13	10-40	135-20
				Total.....	1435-20

(Rs. One thousand four hundred thirty five and ps.twenty only)

Certified that the daily wages are as per rates fixed vide C.O. No. Est.A-1/26/Corr dt. 1-12-83.

The expenditure involved on this sanction is debitable to the head of accounts F.1(3) wages.

*U.P. Derasari*  
(U.P. Derasari)  
Asstt. Postmaster General (Staff)  
Gujarat Circle, Ahmedabad-380009.

...2

| True copy |  
*Mishra*  
~ 220.

Copy for information and necessary action to :-

1. The Chief Postmaster Ahmedabad-GPO. with one spare copy.
2. The Sr. P.M. Navrangpura HPO Ahmedabad-9. with one spare copy.
3. The M.O. I/C P&T Disp. Laidarwaja, Maninagar, Usmanpura with spare copies for concerned outsider.
4. The Director of Accounts (Postal) Nagpur-440001.
5. The J.A.O. (Bgt), C.O. Ahmedabad-9.
6. Guard file.
7. Spare.

RHJ-11/7

29/10/86

DEPARTMENT OF POSTS INDIA  
O/O THE POSTMASTER GENERAL GUJARAT CIRCLE AHMEDABAD : 380 0091  
MEMO NO: STAFF/20-1/Misc/Disp/II dtd at Ahd. the 16/10/86.

Sanction of the Postmaster General, Gujarat  
Circle Ahmedabad.9 is hereby accorded to the payment of  
amount mentioned below to the engagement of the following  
outsiders substitutes in the Gr. D cadre in the P&T  
dispensaries at Ahmedabad as mentioned below on daily wage  
basis during the month of September-86.

Sl	Name of the No outsider	Vice whom engaged	No. of days	Rate per day	Amount payable.
1	Shri N.D. Vala Peon Maninagar Disp.	Shri K.S. Damor	4	Rs.13.10	52.40
2	Shri M.C. Solanki Sweeper Maninagar Disp.	vacant post of sweeper	24½	Rs.13.10	320.95
3	Shri N.C. Vaghela Chokidar Usmanpura Disp.	Vacant post of chowkidar	23	Rs.19.65	451.95
4	Shri M.S Makwana N.O Usmanpura Disp.	Shri R.M Parmar	22	Rs.13.10	288.20
5	Smt. T.H. Dave F.A. Usmanpura Disp.	vacant post of F.A	23½	Rs.13.10	307.85
6	Smt. S. R. Parmar Sweeper Usmanpura Disp.	Mrs. S. R Solanki	24½	Rs.13.10	320.95
7	Shri I.F. Shaikh Peon Lal Darwaja Disp.	Vacant post of peon	20½	Rs.13.10	268.55
(Rs. Two thousand ten and paise eighty five only).					Rs. 2010.85

True copy  
Unsatisfactory  
D.S.N.

• 2 •

Certified that the daily wages are as per  
rates fixed vide C.O No. ESTA/11-26/Corr/V dated  
21-8-86.

The expenditure involved in this sanction is debit able to the head of account F.1 (3) wages and should be met from the sanctioned grant of the current financial year.

*J. D. Green*

(I.D. DESAI)

A.D.P.S (P)  
For Postmaster General,  
Ahmedabad-380 009

A copy of this memo is issued to :-

1 The Chief PM Ahmedabad GPO (with one spare copy)

2 The Sr. P.M Navrangpura HO Ahmedabad (with one spare copy)

3 The M.O I/C P&T Dispnsaries Lal Darwaja/  
Usmanpura/Maninagar Ahmedabad (with spare copies for concerned out sider.)

4 The Director of Accounts (F) Nagpur-440 001

5 The JAO BGT CO Ahmedabad, 9

6 Guard file.

7 o/c

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DEPARTMENT OF POSTS INDIA  
(MINISTRY OF COMMUNICATIONS)

O/O THE POSTMASTER GENERAL:GUJARAT CIRCLE:AHMEDABAD:9

Memo No. Staff/20-1/Misc./Diss/II dtd at Ahd 16/1/87

Sanction of the Postmaster General,  
Gujarat Circle, Ahmedabad:380 009 is hereby accorded to t  
the payment of amount mentioned below to the engagement  
of the following aut siders substitutes in Gr.'D'  
Cadre in the P&T Dispensaries at Ahmedabad as mentioned  
below on daily wage basis during the month of Decem-  
ber '86.

Sl. No.	Name of the out siders.	Vise whom engaged.	No.of days in the mon-	Rate per day.	Amount payable.
1.	Shri I.F Shaikh, peon. Lal- Darwaja Dispensary	Vacant post of peon.	25½	13-10	334-05
2.	Shri N.C. Vaghela Chowkidar Usmanpura Dispensary	vacant post of chowkidar	25	19-65	491-25
3.	Shri M.S. Makwana N.O. Usmanpura Dispensary	Vice Shri R.M.Parmar	23½	13-10	307-85
4.	Smt. T.H. Dave, F.A. Usmanpura Dispensary	vacant post of F.A	24½	13-10	320-95
5.	Smt. S.R. Parmar sweeper Usmanpura Dispensary	Vice Smt. S.R. Solanki	24½	13-10	320-95

.....2/-

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→ D.O.

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i V.K.  
anki  
n, Vacant 25½ 13-10 334-05  
agar post of  
ensary peon

i M.C.  
anki Vacant  
epeper post of  
inagar 25½ 13-10 334-05  
ensary sweeper

Total :Rs. 2443-15

(Rs. Two thousand four hundred fourty three &  
paise fifteen only)

Certified that the daily wages are as per  
ates fixed vide C.O.No. Est. A/11-26/corr/V dated 21.8.86.

The expenditure is involved in this sanct-  
debitable to the head of account F.1(3) wages and should  
be from the sanctioned grant of the current financial year.

2183542222

(U.P.Derasari)

A.P.M.C (staff)

For Postmaster General,  
Gujarat Circle,  
Ahmedabad :380 009.

of this memo is issued to :-

The C.P.M. Ahd GPO (with one spare copy)

The Sr. Postmaster Navrangpura HO. Ahmedabad  
(with one spare copy)

The M.O.Incharge, P&T Dispensaries, Lal Darwaja/  
Maninagar/Usmanpura (with spare copies for concerned  
outsiders.

The Director of Accounts (P) Nagpur

The JAO (Bgt.) C.O. Ahmedabad

G.F.

Spare.

TSP/

31 (P)

DEPARTMENT OF POSTS : INDIA  
(MINISTRY OF COMMUNICATIONS)  
O/C. THE POSTMASTER GENERAL: GUJARAT CIRCLE: AHMEDABAD: 9.

No. Staff/20-1/Misc/Disp/II.Dtd.at Ahd.9 the, 12/8/87.

Sanction of the Postmaster General,  
Gujarat Circle, Ahmedabad.9 is hereby accorded for  
payment of amount mentioned against each of the  
following outsiders substitutes engaged on daily  
wage basis in Group 'D' Cadres in P&T Dispensaries  
at Ahmedabad during the month of July 1987.

Sr. No.	Name of the outsider.	Vice whom engaged.	No. of days.	Rate per day.	Amount payable.
1.	Shri I.F. Shaikh,	Vacant post of peon.	26 in 7/87.	13.10	347.10
2.	Shri S.B. Sharda,	Vacant post of dresser.	26 in 7/87.	13.10	347.10

Maninagar Dispensary.

3.	Shri V.K. Solanki,	Vacant post of peon.	26 in 7/87.	13.10	347.10
4.	Shri M.C. Solanki,	Vacant post of sweeper.	26 in 7/87.	13.10	347.10

Usmanpura Dispensary.

5.	Shri N.C. Vaghela	Vacant post of chowkidar.	27 in 7/87.	19.65	530.50
6.	Shri M.S. Makwana,	Vacant post of N.O.	26 in 7/87.	13.10	347.10
7.	Smt. T.H. Dave,	Vacant post of F.A.	22 in 7/87.	13.10	294.70
8.	Shri D.A. Ladhel,	Vacant post of sweeper.	26 in 7/87.	13.10	347.10

TOTAL 2907.80  
(Rs. two thousand nine hundred seven & paise eighty only).

Certified that the daily wages are as per  
rate fixed vide Circle Office, Ahmedabad. No. EST.A/  
11-26/Corr/V dated 21.8.86.

The expenditure involved in this sanction  
is debitible to head of account '06-101(3) - Wages  
and should be met from the sanctioned grant.

Ans. address  
Asstt. Postmaster General (Staff).  
Gujarat Circle, Ahmedabad. 380009.

H.S.  
12/8/87

.2/-

True copy /

Mushirul  
Dev.

Copy to :-

1. The Chief Postmaster,  
Ahmedabad GPC with one spare.
2. The Sr. Postmaster,  
Navrangpura H.C. with one spare cop.
3. The Medical Office, Incharge, P&T Directorate  
Lal Darwaja/Maninagar/Usmanpura with ~~spare~~  
copies for outsiders concerned.
4. Guard file.
5. Spare.

CSM/12/8/87.

H.C.S.  
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DEPARTMENT OF POSTS : INDIA :  
(MINISTRY OF COMMUNICATIONS )

O/O THE POSTMASTER GENERAL : GUJARAT CIRCLE : AHMEDABAD; 380009

MEMO No; -Staff/20-1/Misc/Disp/III dtd. the 11/3/1988.

Sanction of the Postmaster General Gujarat Circle, Ahmedabad; -9 is hereby accorded for payment to the following outsiders engaged to work on vacant posts of Group-D Cadres in P&T Dispensary at Ahmedabad for the number of days shown against each during the month of Feb. 88. The amount to payable to each outsider is to be calculated at the rate of minimum of the scale of pay of the respective post (on which the outsider has worked) plus dearness Allowance as admissible from time to time (excluding other allowances vig/HR/CCA etc. \$)

Sl No.	Name of the outsider	Vacant Post on which engaged	No of days for which payment to be made.
1.	Shri N.C. Vaghela P&T Disp. Usmanpura	Chowkidar	(29) 29 days.
2.	Shri M.S. Makwana P&T Disp. Usmanpura	Nursing Orderly	29 days
3.	Shri D.A. Ladhel P&T Disp. Usmanpura	Sweeper	29 days
4.	Smt. R.R. Solanki P&T Disp. Usmanpura	F/A	29 days
5.	Shri M.C. Solanki Maninagar Disp.	Sweeper	29 days
6.	Shri V.K. Solanki Maninagar Disp.	Peon	29 days
7.	S.B. Sharda L.D. Disp.	Dresser	29 days.
8.	Shri I.F. Shaikh L.D. Disp.	Peon	29 days.

The expenditure is involved in this sanction is debit able to head of account "06-101 (3)-Wages" and should be met from the sanctioned grant.

S/No. 13  
Asstt. Postmaster General, (Staff)  
Gujarat Circle, Ahmedabad; -9

Copy to:-

1. The Chieq Postmaster Ahmedabad GPO with one spare copy
2. The Sr. Postmaster Navrangpur HO And. 9 with one spare copy
3. The M.O. I/C P&T Dispensary L.D./Maninagar/Usmanpura with spare copies for outsider concerned,
4. Guard fide. (5) Spare.

Panakj/11/3.

1 true copy

W. Shinde  
D.S.

33 (19)

DEPARTMENT OF POSTS: INDIA  
(MINISTRY OF COMMUNICATIONS)

0%O THE POSTMASTER GENERAL : GUJARAT CIRCLE : AHMEDABAD-9.

Memo NO:- 20/1/Misc./Disp/III/dtd. at the Ahd the 13/6/88.

Sanction of the Postmaster General, Gujarat Circle, Ahmedabad: 9 is hereby recorded for payment to following outsiders engaged to work on vacant posts of Group-D cadres in P&T Dispensary at Ahmedabad for the number of days shown against each during the month of May-1988. The amount so payable to each outsider is to be calculated at the rate of minimum of the scale of pay of the respective post (on which the outsider has worked) plus dearness Allowance as admissible from time to time (excluding other allowances viz. HRA/CCA etc.)

Sl. No.	Name of the outsider.	Vacant post on which engaged	No. of days for which payment to be made.
---------	-----------------------	------------------------------	---

1.	Shri N.C.Vaghela P&T Disp. Usmanpura.	Chowkidar	30 days.
2.	Shri M.S.Makwana. P&T Disp. Usmanpura.	Nursing orderly.	30 days.
3.	Shri D.A.Ladhel P&T Disp. Usmanpura.	Sweeper.	29 days.
4.	Smt.R.R.Solanki. P&T Disp. Usmanpura.	F/A.	30 days.
5.	Shri M.C.Solanki. Maninagar Disp.	Sweeper.	30 days.
6.	Shri V.K.Solanki. Maninagar Disp.	Peon.	30 days.
7.	S.B.Sharda. L.D.Disp.	Dresser.	13 days.

The expenditure is involved in this sanction is debitible to head of Account "06.101(3)-wages" and should be met from the sanctioned grant.

*as above*

ASSTT. POSTMASTER GENERAL: STAFF 13/6  
GUJARAT CIRCLE: AHMEDABAD-380 009.

Copy to:-

1. The Chief PM Ahd. GPO with one spare copy.
2. The Sr. P.M. Disp. HO Ahd-9 with one spare copy.
3. The M.O. I/C P&T Disp. Laldarwaja/Maninagar/Usmanpur with spare copies for out sider concerned.
4. Guard file (5) Spare.

1 True copy /  
Muhammad Javed

DEPARTMENT OF POSTS: INDIA  
( MINISTRY OF COMMUNICATION )

OFFICE OF THE POSTMASTER GENERAL GUJARAT CIRCLE AHMEDABAD-3800 09.

Memo No: Staff/20-1/Misc/Disp/III dated at Ahmedabad the 18.1.89

Sanction of the Postmaster General, Gujarat Circle, Ahmedabad-3800 09 is hereby accorded for payment of to following outsiders engaged to work on vacant post of Group D cadre in P&T Disp. Usmanpura at Ahmedabad for the number of days shown against each during the month of December '88. The amount so payable to each outsiders is to be calculated at the rate of minimum of the scale of pay of the respective post ( on which the outsiders has worked) plus allowances as admissible from time to time.

Sl No.	Name of the outsider.	Vacant post on which engaged.	No of days for which payment is to be made.
--------	-----------------------	-------------------------------	---

1.	Smt. R. J. Solanki	H/A	31 days.
2.	Shri M. S. Makwana	N/C	28½ days.

The expenditure involved in this sanction is debit to the head of account '06-101 (3) Wages' and should be met from the sanctioned grant.

*L. I. Vasani*  
( L. I. Vasani )  
Asst. Postmaster General (Staff)  
Gujarat Circle, Ahmedabad-380 009.

Copy to:-

16/1  
14/1

1. The M.O. I/C P&T Disp. Usmanpura, with two spare copy for outsiders concerned.
2. Gaurd file.
3. The S. S. A&P Sn, C.O. Ahmedabad-3800 09. with one spare copy.

*1 True copy*

*W. H. Shinde*  
→ *Adv.*

(21) 33

DEPARTMENT OF POSTS : INDIA.  
(MINISTRY OF COMMUNICATIONS.)

0/0 THE CHIEF POSTMASTER GENERAL GUJARAT CIRCLE : AHMEDABAD : 380 009  
MEMO NO: STAFF/26-1/MIS/Disp/IV.DD. AT AHMEDABAD : 2 THE 10-1990.

Sanction of the Chief Postmaster General, Gujarat Circle, Ahmedabad is hereby accorded for payment of following outsiders engaged to work on vacant posts of group-'D' cadre in P&T Dispensary-Usmangura/Lal Darwaja Ahmedabad for the number of days shown against the outsiders during the month of September-1990. The amount so payable to the outsiders is to be calculated at the rate of minimum of the scale of pay of the respective posts ( in which the outsiders has worked ) plus dearness allowance as admissible from time to time.

Sl. No.	Name of outsiders	Vacant posts	No. of days worked (up to 15.9.90)	No. of weekly off.	Total No. of days.
1.	Shri S. A. Patel	W/o.	13	1	14
2.	Shri M. S. Makwana	W/o	13	1	14
3.	Smt. R. R. Solanki	W/A	13	1	14

The expenditure involved in the sanction is debitible to the Head of Account 06-01 (3) Wages and would be met from the sanctioned grant of current year.

*Mr as am*

FOR CHIEF POSTMASTER GENERAL  
AHMEDABAD : 380 009.

COPY TO

1. to 5. The Chief Medical Officer, P&T Disp. Lal Darwaja/Usmangura. Three spare copies for outsider concerned.
- 6/7. The ~~Medical Officer, In-charge~~ Office ~~dispensary~~ dated 9 with one spare copy. Their attention is invited to this office letter of even number dated 12.9.90. As the communication of IPS order is dated 12.9.90. This sanction is period up to 15.9.90. The Medical Officer, In-charge are responsible for engagement of outsiders without approval.
- 6/7. The section Supervisor, M&P Sn. C.O. Ahmedabad-9. with one spare copy.
8. Office copy.
9. Spare.

*True copy /  
Wishal Patel  
→ DSN.*

NOTICE BEFORE ADMISSION

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JUDL...I

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD

B.D.PATEL HOUSE,  
NR. SARDAR PATEL COLONY,  
P.O. NAVJIVAN,  
AHMEDABAD-380 014.

Issued on the 27th day of October 1989.

REGN. NO. O.A. / 462 /1989.

Shri M. S. Makwana

APPLICANT (S)  
ADV. MR. A.D. Desai

V/s.

Union of India & Ors.

RESPONDENT (S)

ADV. MR. J.D. Almera

To.

01. The Post Master General, Gujarat Circle,  
Nayrangpura, Ahmedabad-380 009

02. The Union of India, Post & Telegraph Department,  
New Delhi.

Whereas Shri M.S.Makwana, applicant has made an application under Section 19 of the Administrative Tribunals Act, 1985, to this Tribunal, bearing OA No. 1492 189 stated above and whereas the above matter is put up for hearing on 27.10.1989. The Hon'ble Tribunal has passed the order as mentioned below. \*

Whereas the said application has been again fixed for admission/interim orders on 08.11.1989 at 10.30 A.M.,  
A copy of the application along with the relevant annexures  
is attached bearing Regn. No. as OA No./ 462 /89.

You are requested to produce the record(s) noted below on the aforesaid date of hearing for the perusal of the Hon'ble Bench of the Tribunal.

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### STYLING A PAPERBACK

True copy

Wenshaw's  
1872

Should you wish to argue anything against the admission of the application or issue of interim order, you are at liberty to do so on the date fixed, or any other date to which the case may be adjourned, either in person or through an advocate.

Also take notice that in default of your appearance on the date fixed, the case will be heard/ proceeded ex parte.

Date : 01.11.1989

*Meht*  
DEPUTY REGISTRAR  
CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

ORDER PASSED ON : 27.10.1989

Heard Mr. A.D. Desai and Mr. J.S. Yadav for Mr. J.D. Ajmera, learned advocates for the applicants and respondents respectively. The petitioners being daily rated employee is sought to be terminated by the end of this month. Learned advocate for the respondents would like to file reply citing the Supreme Court's decision on the basis of which a scheme prepared by the respondent in which preference is to be given to the regular employees who are having longer period of service with the department for which the applicants' services are going to be terminated by being substituted by such employees. Learned advocate for the respondents states that 10 days time may be allowed for filing reply. Pending admission, ad interim relief in terms of the respondents not terminating the petitioners until 8th November, 1989 for reply on interim relief and admission by the respondents be filed with copy to the petitioner. The matter be placed on 8th November, 1989 for admission and continuing interim relief.

37  
(23)

Annexure A/4 - English Version

Makwana Maheshbhai Somabhai  
Nursing Ordly  
P & T Dispensary  
Usmanpura, Ahmedabad-14  
Date : 16.10.1990

Medical Officer In-charge  
P & T Dispensary  
Usmanpura  
Ahmedabad-14

Sub : Taking in service

Respected Sir,

I respectfully submitting that I am working in the dispensary as casual labourer. Today also post is vacant in the office. But you are refusing me to perform my duty which is illegal as per law. You are requested to allow me to resume my duty so that we should not take shelter of law.

Yours faithfully,

sd/-

(M. S. Makwana)

TRUE COPY.

(Advocate)

(u/c)

A/4

માનવાચા માદ્રાસા (રોમાની)

તારીખ 20/5/78

(24)

જી ખોટ હી દીસાપોરા 38

ક્રમાંક 27/માદ્રાસા

જી 93/90/60

માદ્રાસા નોંધની ક્રમાંક

જી 20/5/78 દીસાપોરા

ક્રમાંક 27/માદ્રાસા

દાખલે આપી થિયું હી દાખલું

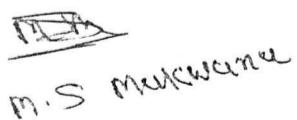
જી. 27/5/78

જી 20/5/78 દીસાપોરા ક્રમાંક 27/માદ્રાસા (21. 919/63)

ક્રમાંક 27/માદ્રાસા દીસાપોરા 37/2 નોંધ કરી

જી 20/5/78 દીસાપોરા 37/2 નોંધ કરી

For Immadi Person

  
M.S. Mukwane

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH.

Original Application No. 429 of 1990.

Mahesh S. Makwana. .... APPLICANT

Versus

Postmaster General, Ahmedabad  
and others. .... RESPONDENTS.

Written reply on behalf of all respondents

*M. M. Raval* Designation APMG  
(Staff) do hereby submit written reply to the  
contents of the application as under :-

1. I say and submit that I am competent to file  
written reply on behalf of all the respondents. I am  
well conversant with the facts of the case and on  
the basis of the information derived by me from the  
records of the case, I am submitting this written  
reply as under :-

2. I say and submit that the application of the  
applicant is thoroughly misconceived in law and facts  
and deserves to be dismissed with costs. I say and  
submit that from the facts pointed out hereinafter  
the Hon'ble Tribunal will be pleased to find that  
there is no substance in the application.

I say and submit that applicant was engaged  
for sprinkling water on Part Time hourly basis with  
effect from 24-23-4-1986 in P. & T. Dispensary,  
Usmanpura. The applicant was engaged as outsider

substitute on the vacant post of Nursing & Orderly with effect from 16-6-1986. The applicant was engaged only to man work on vacant post. The recruitment of Nursing Orderly could not be made due to ban orders imposed by the Government of India. The applicant was never appointed on regular basis. It may be stated that for the post of Nursing Orderly, the minimum qualifications are; age 18 to 25 years, education upto 8th Std.; experience of Dressing in any medical institution for one year etc. The applicant has studied upto 6th Std. and his birth date is 11-10-1960 and the applicant has no experience in the medical institution. Therefore it is clear that the applicant was not eligible for being appointed even on the date of his engagement as Nursing Orderly. In the engagement of the applicant, the minimum qualifications were not insisted upon by the department because the applicant was engaged to man the work of Nursing Orderly temporarily. It is submitted that for the recruitment of Nursing Orderly, nomination from the Employment Exchange is compulsory, as per recruitment rules. The name of the applicant is not sponsored by the Employment Exchange. Copy of the relevant portion of the recruitment rules is annexed herewith and marked Annexure R/1. It is submitted that the applicant had filed two applications in the Honourable Tribunal being O.A.No.462 of 1989 and O.A.No.124 of 1990 and both the applications were dismissed by the Hon'ble Tribunal being premature and on the ground that

ANNEX R/1.

ANNEX R/2  
AND R/3.

the service of the applicant is not terminated. The copies of the order are annexed herewith and marked Annexure R/2 and R/3. It is submitted that as the applicant was not regular permanent employee of the department and as it was ~~not~~ possible to manage the work without engagement of the outsider substitute like applicant, it was decided not to engage the applicant as the outsider substitute with effect from 16-10-90. It is therefore submitted that the decision of the respondents not to engage the applicant is quite legal and proper.

It is submitted that the applicant has no legal right to approach before the Hon'ble Tribunal as the applicant is a daily rated unproved substitute and services of the applicant cannot be termed as civil service under the Government of India so as to ~~not~~ attract jurisdiction of this Hon'ble Tribunal. It is, therefore, submitted that the application also deserves to be dismissed on the point of jurisdiction without examining other aspects of the case.

3. As regards contents of Paras 6(1), 6(2), 6(3) and 6(4) of the application, it is submitted that as stated above, the applicant was engaged for sprinkling water as outsider substitute to man the Nursing Orderly because the regular appointment of the Nursing Orderly could not be made due to ban imposed by the Government of ~~Gujar~~ India. It is denied that the applicant, was appointed on regular basis. The applicant worked

as outsider substitute only until the date of discontinuation of ~~xxx~~ his engagement.

The applicant was never placed in regular Pay Scale of 750-900. Actually outsiders engaged are paid minimum of the Pay Scale of the post on which they are working divided by number of working days to arrive at daily rate. The outsiders are not eligible for other benefits like Sick Leave, Increments, L.T.C. etc. etc. The medical allowance is not admissible even to the regular employees of the department. The pay orders were issued as per norms and daily rates fixed from time to time. The rate varies from time to time on account of change in the rate of Dearness Allowance. The pay orders are being issued on receipt of the certificate from the immediate Controlling Officer i.e. Medical Officer in charge for the number of working days on which the outsider has actually worked. The outsider substitute is paid allowance for the date on which he has actually worked. There is no intention to create brake in the service as the engagement of outsider like the applicant was purely on daily rated basis. It is submitted that on receiving clarification from the department, the applicant was allowed to draw allowance for intervening Sundays i.e. Weekly Off. It is submitted that no judgment which has been referred by the applicant is within the knowledge of the respondent, however the legal submissions will be made at the time

of hearing of this application by the Counsel appearing on behalf of the respondents. The copies of the orders are already produced hereinabove. However it is submitted that the Hon'ble Tribunal did not admit the application as there was no reasonable basis for apprehension at the relevant time.

4. As regards contents of Paras 6(5), 6(6) 6(7) and 6(8) of the application, it is submitted that as the applicant was never appointed on regular basis, the applicant was not entitled for leave and other benefits as in case of other regular employees, the rates of allowance to be paid were fixed as per norms of the department i.e. minimum of the Pay Scale on which the outsider substitute is working plus other admissible benefits. The provisions of I.D. Act and Bombay Shops and Establishment Act are not applicable to the present case. It is submitted that no notice before discontinuation of the engagement was required as the applicant was not the regular employee. It is submitted that the applicant was not a regular employee of the department and as it was possible to manage the work without engagement of the outsider substitute, it was decided not to engage the applicant who was working as outsider substitute from economic point of view. As the work that was performed by the applicant was manageable with the availability of the regular staff, it

was he was not engaged from 16-10-90 onwards.

As stated above, notice in writing was not necessary for non-engagement of the applicant.

It is submitted that x the cases quoted by the applicant in Para 6(7) are not applicable to the present case, however the legal submissions shall be made by the Counsel appearing on behalf of the respondents at the time of hearing of the application.

5. As regards contents of Paras 6(9) and 6(10) of the application, it is submitted that as stated above, provisions of I.D.Act and Bombay Shops and Establishment Act are not applicable.

It is denied that applicant was appointed regularly. It is submitted that there is no violation of Article 14 or Article 16 of the Constitution of India or any articles of the Constitution of India. The judgment of the Hon'ble Supreme Court referred is not applicable in the present case. It was submitted that there was no direction in the order of the Hon'ble Tribunal in O.A.No.462 of 1989 as alleged.

6. It is submitted that in view of the facts and circumstances of the case as pointed out hereinabove and the legal submissions which may be made at the time of hearing of this application, the Hon'ble Tribunal will be pleased to find that there is no substance in the application and the applicant is not entitled to

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any of the reliefs as prayed for in Paras 7 and/or 8 of the application. Therefore, it is  
prayed that Hon'ble Tribunal may/pleased to  
dismiss the application with costs. The Hon'ble  
Tribunal may be pleased to direct the applicant  
to pay costs to the respondent for defending  
this application.

Place: Ahmedabad.

Date : 7-8-1991.

*Mukund*  
Asstt. Postmaster General (Staff)  
Gujarat Circle, Ahmedabad-380009

*मुख्य पोस्टमास्टर जलरू*

Chief Postmaster General

ગુજરાત સંકિલ, અહેમદાબાદ-380009

Verification Gujarat Circle, Ahmedabad-380009

I, M.M. RAVAL Designation APMG  
(Staff) for and on behalf of the respondents, do hereby  
solely verify and state that what is stated hereinabove  
is true to my best of knowledge, information and  
belief and I believe the same to be true and correct.  
I have not suppressed any material facts.

Place: Ahmedabad.

Date : 7-8-1991.

*Mukund*  
Asstt. Postmaster General (Staff)  
Gujarat Circle, Ahmedabad-380009

*मुख्य पोस्टमास्टर जलरू*

Chief Postmaster General

ગુજરાત સંકિલ, અહેમદાબાદ-380009

Gujarat Circle, Ahmedabad-380009

Reply/Rejoinder/written submissions  
filed by Mr. .... R.M. Raval  
learned advocate for petitioner/  
Respondent with record H/122  
Copy served/not served & on or side

21.26/8/91 At Gaekwad  
By Registrar C.A.I.D.O.  
A'bad Bench

(29) 12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O.A. NO. 429/90

Mahe<sup>s</sup> S. Mekwan

..applicant

vs

Union of India & ors.

..respondents

REJOINDER

D. No. 25/10  
R.M.

1. I, Shri Mahe<sup>s</sup> S. Mekwan, applicant have gone through the reply filed by the respondents and am conversant with the facts of the case and I say that contentions and submissions of the reply are far from truth and are denied by me. I deny all the contentions and submissions of the reply except those, which are specifically admitted by me in the rejoinder.

2. With reference to para 1 & 2 of the reply, I say that the respondent has not filed authority letter to show that he is authorised to file the present reply. It is also not true that he is conversant with the facts of the case. It is not true that the application is misconceived in law and facts and deserves to be dismissed. It is also not true that there is no substance in the application. So far the details of service is concerned, I have mentioned in the application and I reiterate the same. The contentions of respondent that the applicant was never appointed on regular basis etc. are misconceived. That so far the industrial law is concerned, it gives certain rights on completion of 240 days. The contentions of respondent about not having the requisite qualifications etc. are also misconceived and not maintainable. That the issue is directly decided by the Hon'ble Supreme Court in case of Bhagwati Prasad, where the Hon'ble Supreme Court has said that if an employee is continued for 2-3 years service with broken spell, thereafter

*COPY Served to Mr. Mukesh Patel  
1/1/13*

they cannot be permitted to deny them regularisation on the ground that they are not having the requisite qualifications at the time of entering the service. Thus the contentions of respondent to this extent are not maintainable. It is also not true that the applicant was appointed to man the work of Nursing purely temporarily. The contentions of respondents about sponsoring the name from Employment Exchange etc. are also misconceived because that is required to be looked into at the initial stage of appointment, and not later on. So far Anxx.R/1 is concerned, I have dealt with in the later para.

The contention of respondent that the applicant has filed earlier two applications is not disputed but from that it can be seen that when the Hon'ble Tribunal has protected the applicant against the arbitrary exercise of power by the respondent, they have made the statement that no order is passed and the application is premature. That now the situation is that verbally the service of the applicant is terminated and therefore, from the conduct of the respondents, it can be seen that they have played mischief with the applicant as well as this Hon'ble Tribunal and misguided them and interfered in the process of justice. At this time also, no legal and valid order of written order is given to the applicant. The nature of work on which the applicant was working, was a permanent nature of work and therefore the applicant's case is required to be considered for regularisation. It is also not true that the decision of the respondents not to engage the applicant is quite legal and proper. It is also not true that the applicant has no legal right to approach before the Hon'ble Tribunal. Such contentions

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are misconceived and it seems that the respondents do not know ABCD of the legal provisions. It is not true that the application is required to be rejected on the ground of jurisdiction as stated by the respondents. I reiterate and rely what I have stated in my application.

3. With reference to para 3 of the reply, I reiterate my contention in para 6.1 to 6.4 of the application. I say that the contentions of respondent about imposition of ban etc. are misconceived because on such ground the employees cannot be permitted to be exploited by the State authorities. The action on the part of the respondents to exploit the applicant employees is in flagrant violation of the aim and object of the Constitution. I reiterate that I was appointed on the regular vacant post and the respondents have no justification to continue me as a daily wage employee and to deprive me the status and benefits available to the regular employees of the respondent department. The contention of respondent that the daily rated employees are not entitled to get the benefits and allowances which are granted to the regular employee is also misconceived. The said contention of respondent shows that the respondent is interested only in the exploitation of the employees. The contention of respondent that he is not aware about the judgement of the Hon'ble Supreme Court itself shows whether the respondents are properly\* legally advised or not. It shows that the respondents are flouting the provisions of law and give the excuse of ignorance of law. The said contentions of the respondent are also not correct because the applicant has filed two earlier applications and at that time, the respondents were aware about the situation and their counsel was engaged in the cases. It is also not true that when the applicant has filed the earlier applications, the respondents were not intending to terminate the service of the applicant but as the applicant has approached to the H'n'ble Tribunal in time and before they

able to effect the termination, the respondents have restrained themselves and waited for a chance to terminate the service of the applicant and at this time also they have flouted all the provisions of law. I reiterate and rely what I have stated in my application.

4. With reference to para 4 of the reply, I reiterate and rely what I have stated in para 6.5 to 6.8 of the application. The contentions of respondent that the applicant was never appointed on regular basis etc. are misconceived. It is also not true that the applicant is not entitled for leave and other benefits available to the regular employees. It shows intention of the respondents that only with a view to deprive the applicant of those benefits, which are available to the regular employees, he was continued on daily wage basis. The post on which the applicant was appointed was permanent vacant post. It is not true that the provisions of I.D. Act and Bombay Shops & Establishment Act are not applicable to the present case. The contention of respondent that ~~the~~ no notice was required to be given as the applicant was not a regular employee is misconceived. The contention of respondent about disengagement of the applicant from 16.10.90 is also misconceived. On one hand, the respondent says that the nature of work was such that the applicant was required to be engaged as daily rated employee and on the other hand, he says that the work was manageable by the regular employee, which is self-contradictory statement.

5. With reference to para 5 and 6 of the reply I say that I reiterate and rely what my contention in para 6.9 and 6.10 of the application and state that

it is not true that I.D. Act and Shops & Establishment Act are not applicable in the present case. It is also not true that there is no violation of Art. 14 & 16 of the Constitution of India and the judgement of the Hon'ble Supreme Court is not applicable in the present case. It is also not true that there was no direction in the order of the Hon'ble Tribunal in earlier Original Application. It is also not true that in light of the submissions in the reply, the application is not required to be entertained and no relief prayed for in the application is required to be granted. It is also not true that the application is required to be dismissed with cost.

I reiterate and rely what I have stated in my application and say that there is no justification available to the respondents to terminate ~~the~~ my services without following the mandatory provisions of Industrial Dispute Act. That I have completed 240 days in every year and particularly in the last 12 calendar months and therefore it is the duty and responsibility of the respondents to follow the provisions of Sec. 25F. That the similarly situated two employees of the respondent department have approached to this Hon'ble Tribunal and the Hon'ble Tribunal was pleased to quash and set aside the termination order and directed to grant them all consequential benefits and regularisation.

Date : 11/93  
Ahmedabad

  
(P. H. Pathak)  
Advocate for the applicant

VERIFICATION :

I Shri Maheshbhai Makwana S/o Somabhai Makwana working as P & T Deptt. Ahmedabad resident of Ahmedabad do hereby verify that the contents from 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Date : - 1/1/43

Ahmedabad.

Shri Maheshbhai  
DEPONENT.

Reply/Rejoinder/written submissions  
filed by Mr. P. H. Patel, Adv.  
learned advocate for petitioner/  
Respondent with second set.  
Copy served/not served & other side.

1/1/1943 *[Signature]* 1.1.43  
By Registrar C.A.T. (J)  
Ahmedabad Bench

*Maheshbhai*