

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Appointment

O.A. No. / 386/91
T.A. No.

DATE OF DECISION 23.11.1992

Hemabhai Kanabhai Chauhan Petitioner

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

Versus

Union of India & others Respondent

Mr. Jayant Patel Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R.C. Bhatt : Member (J)

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?

Hemabhai Kanabhai Chauhan,

At : Ved, Ta. Sami,

District : Mehsana.

.....APPLICANT

(Advocate : Mr.P.H.Pathak)

VERSUS

1. Union of India,

Notice to be served through,
Chief Postmaster General,
Gujarat Circle,
Ahmedabad- 390 009.

2. Superintendent of Post Office,
Patan Division,
Patan

3. Bhikhapuri **Goswami**,
Branch Postmaster,
Village Ved, Ta. Sami,
District : Mehsana.

....RESPONDENTS.

(Advocate : Mr.Jayant Patel)

O R A I O R D E R

O.A./386/91

Date : 23.11.1992.

Per : Hon'ble Mr.R.C.Bhatt

Member (J)

1. The only question which arises before us in this case is whether the respondents were entitled to cancel the appointment of the applicant without giving him an opportunity of hearing before the appointment was cancelled. The answer has been given by the Hon'ble Supreme Court in the decision in Shrawankumar Jha and others v/s State of Bihar and others

reported in 1991 Supreme Court Cases (L&S)1078.

The facts of the case before the Hon'ble Supreme Court were that 175 persons were appointed as Assistant Teachers by the District Superintendent of Education, Dhahbad, by an order dated May 28, 1988 and they were to join specified schools by July 4, 1988. By an order dated 2nd November, 1988, the appointments were cancelled because the District Superintendent of Education who gave appointments to 175 persons had no authority to make the appointments. The Hon'ble Supreme Court held "In the facts and the circumstances of this case, we are of the view that the appellants should have been given an opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It is very well settled that no order to the detriment of the appellants could be passed without complying with the rules of natural justice. We set aside the impugned order of cancellation dated 3rd November, 1988 on this short ground ". The learned advocate for the respondents on the other hand put reliance on the decision in Ashok Kumar Sangwan v/s Food Corporation of India and another , reported in 1989 (2) SLR page 137 which is the decision of Punjab and Haryana High Court. The judgment shows that all those persons who were given appointment had joined the department on or before 04.12.1985 i.e. the date when all the selections were cancelled by the department. Subsequently, no appointment or posting order was issued out of the list of selected candidates in which the name of the petitioner of that case

....4.....

stood at Sr.No.11. Having regard to these facts that ~~the~~ writ petition was dismissed. At The principle of natural justice, is not considered at all in the above said decision of the High Court. Therefore, the said decision does not help the respondents ~~more~~ so ~~h~~ when there is subsequent decision on the point by the Hon'ble Supreme Court. (Sup/para)

2. The learned advocate for the respondents does not dispute the fact that the order of appointment Annexure A dated 28th November, 1990 was issued to the applicant and the ~~same~~ same was accepted by applicant vide reply dated 30.11.1990. He also does not dispute the fact that it was suspended vide Annexure A/1 dated 28th December, 1990 and was ultimately cancelled by the order Annexure A/2 dated 7th March, 1991.

The learned counsel for the respondents states that the appointment was merely the contract and the respondents were entitled to repudiate the contract before the applicant joined service. It may be noted at this stage that this plea is not taken by the respondents in their reply. The learned counsel for the respondents took us through the major portion of the reply. The reply of the respondents categorically shows that according to them though the applicant was selected, he was not ~~not~~ taken on duty because the respondent no.3, who is now joined as a party, was found more suitable subsequently on ^{u a} review of the selection process and was ^{more} suitable candidate, hence appointment order

....5....

was not given effect. Therefore, the question arises whether the respondents can cancel the appointment on the ground that, according to them, they found more suitable candidate in preference to the applicant on review of selection process without giving an opportunity to the applicant of being heard. There are several other grounds mentioned in the reply but there is no ground that the appointment given to the applicant being a Contract, it can be repudiated subsequently by respondents. However, even such ground cannot be accepted because of the ~~Judgment~~ Hon'ble Supreme Court judgment discussed above.

3. The respondent no.3 to whom the notice was issued and who is served has not remained at present.

4. The learned counsel for the respondents also relied on the decision in Joginder Singh v/s The Haryana Agriculture University, reported in 1989(2) SLR page 615, which is also the judgment of Punjab and Haryana High Court. The learned advocate for the respondents drew our attention to para 13 of the judgment in which the High Court after following the previous Division Bench judgment held that it could not be said that any right had vested in the petitioner for the ~~pink~~ post for which he was selected since he had not joined the service, rather no appointment letter was issued to him. This decision will not be of any assistance to the respondents in view of the latest ^{mu} ~~decision~~

.....6.....

of the Supreme Court referred to above.

In the result, we shall have to allow this application. We pass the following order.

5.

ORDER

The order passed by the respondent no.3 dated 7th March, 1991 Annexure A/2 is quashed and set aside and the respondent no.2 is directed to allow the applicant to resume the service with the full back wages, ~~then from~~ ^{on} the date of acceptance of appointment. The respondents would be entitled ~~to~~ to take the decision thereafter on merits after giving an opportunity to the applicant to be heard if they desire to ~~not~~ reconsider the appointment any further. The respondent no.2 is directed to implement this order within one month from the date of receipt of this order.

No order as to costs.

Ressal

(R.C.BHATT)

MEMBER (J)


(N.V.KRISHNAN)

VICE CHAIRMAN

*SS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE OA 386 91. OF #9

NAME OF THE PARTIES Shri. H. C. Chauhan,

VERSUS
U.S.A. 8 obs

PART A B & C

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE

UF 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:

386

of

1991

Miscellaneous Petition No:

of

Shri Hemulchand K. Chauhan Petitioner(s)

Versus.

Meagan

Respondent(s).

This application has been submitted to the Tribunal by Shri P. H. Pathak. Under Section 19 of the Administrative Tribunal Act, 1985. It has scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications 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 14 days/draft letter is placed below for signature.

ASSTT:

1. English translation of page 12, 13, 16/17

S.O.(J) :

is not supplied.

D.R.(J) :

21/8/91

K. B. SAW
02/Aug/91

KNP/30891/ ***

H. G. Gaurav
2/8/91

We may issue objection letter as per flag A under signature of D.R.(J).

B. R. S.
Sett.
8/8/91

1/8/91
Sett.
8/8/91

P. H. P.

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

APPLICANT(S)

Hemabhai K. Chauhan

RESPONDENT(S)

met &

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO
RESULT OF EXAMINATION.

1. Is the application competent ? Yes

2. (A) Is the application in the prescribed form ? No

(B) Is the application in paper book form ? No

(C) Have prescribed number complete sets of the application been filed ? No

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 ? No

4. Has the document of authorisation/ Vakalat Nama been filed ? Yes

5. Is the application accompanied by D.D./I.P.C. for Rs. 50/-? Number of D.D./I.P.C. to be recorded. DDM 801 8664.5

6. Has the copy/copies of the order(s) against which the application is made, been filed. ? Yes

7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed. ? No

(b) Have the documents referred to in (a) above duly attested and numbered accordingly ? No

(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 ? Yes

...2..

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? *Y*
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal? *M*
11. Are the application/duplicate copy/~~spare~~ copies signed? *Y*
12. Are extra copies of the application with annexures filed?
 - (a) Identical with the Original. *Y*
 - (b) Defective. *Y*
 - (c) Wanting in Annexures *Y*
 - (d) Distinctly Typed? *Y*
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) those indicated in the application? *Y*
16. Are the transactions certified to be true or supported by an affidavit affirming that they are true? *Yes*
17. Are the facts for the cases mentioned under item No, 6 of the application?
 - (a) Concise? *Y*
 - (b) Under Distinct heads? *Y*
 - (c) Numbered consecutively? *Y*
 - (d) Typed in double space on one side of the paper? *Y*
18. Have the particulars for interim order prayed for, stated with reasons? *Y*

checked,

*B.D.
B.S.G.I*

10
SIC 315) 9
1675

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD
ORIGINAL APPLICATION NO. 386 OF 1991

Hemabhai Kanabhai Chauhan

.. Applicant

Vs

Union of India & ors.

.. respondents

I N D E X

Sr. No.	Annx	Particulars	Pages
1.	-	Memo of the application	1 to 9
2.	'A'	Copy of order dt. 20.11.90	10 to 11
3.	A/1	Copy of letter dt. 28.12.90	12
4.	A/2	Copy of order dt. 7.3.91	13
5.	A/3	Copy of Advocate's notice dt. 27.3.91	14 to 15
6.	A/4	Copies of two representations	16 to 18

Date :

Ahmedabad

(P. H. Pathak)
Advocate for the applicant

KO

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO. 386 OF 1991

I Applicant : Hemabhai Kanabhai Chauhan

At : Ved, Ta. Sami

Dist. Mehsana

II Respondents : 1) Union of India

Notice to be served through
Chief Postmaster General
Gujarat Circle
Ahmedabad-380009

2) Superintendent of Post Office

Patan Division
Patan

III Order under challenge : Order dt. 28.12.90 and 7.3.91
issued by the respondent No. 2
suspending and cancelling
the order of appointment of
the applicant as E.D.B.P.M.

IV Jurisdiction & Limitation : The applicant declare that
& the jurisdiction of this tribunal
over the subject matter of this

application is within the
jurisdiction of this tribunal
and limitation prescribed
under sec. 21 of the
Administrative Tribunal Act.

VI. Facts of the Case :-

1. The short issue required to be decided in this application by this Hon'ble Tribunal is, whether an appointment order issued in favour of the applicant can be cancelled or suspended by the respondent authority without following the principle of natural justice ?

and if the principles of natural justice are not

followed, what are the consequences ? That dealing
with the identical situation of cancellation of
appointment by the Commissioner of Jaunpur Nagarpalika,

the Hon'ble Supreme Court was pleased to hold that
the order of appointment cannot be cancelled without
affording an opportunity of being heard to the affected
employees and if the principles of natural justice
are not followed, the order of cancellation is void.

The relevant portion of judgement is reproduced

hereasunder: -

"The order of appointment conferred a vested right
in the appellant to hold the post of Tax Inspector,
that right could not be taken away without affording
opportunity of hearing to him. Any order passed in
violation of principles of natural justice is
rendered void. There is no dispute that the Commissioner's
order had been passed without affording any opportunity
of hearing to the appellant therefore the order was
illegal and void. The High Court committed serious
error in upholding the Commissioner's order setting
aside the appellant's appointment. In this view,
orders of High Court and the Commissioner are not
sustainable in law." (1991 15 ATC Page 851)

2. Here the applicant is a Schedule Caste candidate,
who was duly selected by the respondents after
issuing a notice for appointment to the post of
Extra Departmental Branch Postmaster at village Ved,
Ta. Sami, Dist. Mehsana. That a notice was placed
at the Panchayat House at village Ved to fill up
the post of Extra Departmental Branch Postmaster,
pursuance to which the applicant has made an application
and he was called for the interview at Hariji Post Office.
That after the interview, police inquiry was also
completed and out of all the candidates, the applicant
was selected for appointment to the post of Extra
Departmental Branch Postmaster and order of appointment
was issued in favour of the applicant idt. 120.11.90.

3

Hereto annexed and marked as ~~Annexure A marked as~~

Annexure 'A' is a copy of the order dt. 20.11.90 appointing the applicant as E.D.B.P.M. at village Ved. That the said appointment order was accepted by the applicant and had submitted his acceptance to the respondent authority. That pursuance to the appointment order, the applicant has reported to Postal Inspector at Harij and as the Postal Inspector was not there, the applicant was directed to report to the respondent No.2. The respondent No.2 has informed the applicant that as the Inspector is not present, the applicant has to report to Inspector at Harij. That again the applicant went to report for duty to Inspector at Harij, who has informed the applicant to wait for few days and said that he will send his subordinate at Ved for completion of the procedure of handing over the charge etc. Pursuance to that, one Shri Ishwarbhai Thakor came at Ved to give charge of the Branch Post Office to the applicant and he has informed the applicant to come at 8.00 A.M. on next day i.e. 16.12.90. That the applicant has reported to Shri Ishwarbhai Thakor, the subordinate of Inspector at Harij, at that time the applicant was informed that as Shri Bhikhupuri Goswami, who was E.D.B.P.M. at Ved, has proceeded on leave, the procedure of handing over the charge will not be completed and the office will inform the applicant about the same on resuming the duty by Shri Bhikhupuri Goswami. The applicant has waited for 3-4 days and thereafter has reported to Inspector at Harij, requesting to hand over the charge in light of the appointment order issued in his favour. The applicant was directed to report the respondent No.2 at Patan. The applicant has personally visited thrice to Patan to the respondent No.2 and ultimately on 28.12.90 the applicant was given an order informing him that

the order which was issued in favour of the applicant is placed under abeyance till further order.

A copy of the letter dt. 28.12.90 is annexed and marked as Annexure A/1 to this application.

That in the meantime, the applicant has made several representations to the respondent authority requesting

them to allow the applicant to resume his duty

and hand over his charge but it has reached to deaf

ears. That after 28.12.90, also the applicant has

made representation to Sr. Divisional Inspector

of Post, Postmaster General and to the other authority

like, Collector, D.S.P. etc. for redressal of his

grievance but with great surprise of the applicant,

neither the Postmaster General nor S.D.I.P. or the

respondent No.2 has replied the representation of the

applicant nor has allowed the applicant to resume

his duty and ultimately on 7.3.91, the applicant was

informed by an order of the respondent No.2 that the

appointment given in favour of the applicant on 20.11.90

is cancelled as Shri Bhikhupuri Goswami, who was

working as E.D.B.P.M., is fulfilling all the

conditions for appointment, and therefore, he is

continued in services. Aggrieved by the said order,

the applicant has to approach this Hon'ble Tribunal

by way of this application. Copy of the order dt. 7.3.91

is annexed and marked as Annexure A/2 to this application.

3. It is submitted that Shri Bhikhupur was not called for the interview with the applicant.

First time the applicant was informed by the

respondent No.2 that as Shri Bhikhupuri is fulfilling

the requirement to fill up the post of B.P.M.

he is continued in services. The said action on the

part of the respondents is ex facie arbitrary,

unconstitutional and in flagrant violation of the

principle of natural justice and fair play. It is pertinent to note that after following the due procedure of law as provided under rule, the applicant was selected to be appointed as B.P.M. at Ved and the appointment order was also issued in favour of the applicant. Moreover, for about 5 months, at no point of time, the applicant was informed about the reason for non allowing to resume duty. It is pertinent to note that prior to receiving of the appointment order, the applicant was earning his livelihood in Udai Gas Agency. But as he is appointed as B.P.M., he has resigned from there. Moreover, Shri Bhikhupuri Goswami was not appointed after following the procedure of law and the order of appointment in favour of the applicant cannot be permitted to be cancelled to accomodate Shri Bhikhupur Goswami. To accomodate Shri Goswami, by cancelling appointment order of the applicant itself speaks about some irregularity and favouritism to Shri Bhikhupuri Goswami by the respondent No.2 and higher officers have also supported such arbitrary exercise of powers. The powers are exercised by the respondent No.2 with malafide intention to favour Shri Goswami, which is violative of Art.14 & 16 of the Constitution of India and is required to be quashed and set aside.

4. It is submitted that as stated above the applicant was given an appointment order and only with a view to accomodate Shri Goswami, the respondent No.2 was sending the applicant from pillar to post and it was anyhow managed for such a long period not to permit the applicant to take the charge at village Ved. It is pertinent to note that the respondent No.2 has not given any reason for placing the order of applicant in abeyance. That both the action of the respondent No.2, first placing the order

that the said order is in violation of the principle of natural justice and is liable to be quashed and set aside. The order of cancellation of the same to accommodate Shri Goswami is in flagrant violation of the principle of natural justice and is liable to be quashed and set aside. The order is liable to be quashed and set aside.

5. It is submitted that after the said cancellation of the order, the applicant has made several representations to the respondent No. 1 & 2 for redressal of his grievance but it has reached to deaf ears and the applicant was constrained to approach the advocate and the advocate of the applicant has issued a notice to the respondents on 27.3.91 but till date the respondents have not cared to reply. A copy of Advocate's notice dt. 27.3.91 is annexed and marked as Annexure A/3 to this application. That as the respondents have not restored the original position and as the applicant is not permitted to resume his duty pursuance to the appointment order in his favour, the applicant has to approach this Hon'ble Tribunal by way of this application. The action on the part of the respondents is prima facie bad in law and is required to be quashed and set aside. That the applicant has made the representations by Regd. Post and the representations are made on 12.12.90, 15.12.90, 21.12.90, 26.2.91, 13.3.91, 16.3.91 etc. That my advocate will point out the representations to the Hon'ble Tribunal at the time of hearing of the matter. As an exam. two representations are annexed and marked as Annexure A/4 to this application.

6. Thus looking to overall circumstances of the case, the case of the applicant is covered by the judgement of the Hon'ble Supreme Court and there is no valid reason available with the respondents not to permit the applicant to resume his duty. That once the order of appointment

AB

is issued in favour of the applicant, it creates a right to the post in favour of the applicant, which cannot be cancelled or taken away by the respondents without following the principle of natural justice. That while placing the order in abeyance and cancelling the same, no notice whatsoever or reason whatsoever was given to the applicant by the respondent No.2 to enable him to explain the legal situation. Thus the order passed by the respondent is in flagrant violation of the principle of natural justice and is void-ab-initio. The case of the applicant is a strong *prima facie* case. The balance of convenience is in favour of the applicant because on one hand, the applicant has left the job where he was working and after the appointment order the respondents have cancelled the same without following the principle of natural justice and therefore, the applicant's family is facing starvation situation and therefore, looking to overall circumstances of the case, the interim relief prayed for is required to be granted in favour of the applicant.

VII. Relief sought for :

In the abovementioned facts and circumstances of the case, the applicant pray :

(A) The Hon'ble Tribunal be pleased to declare the impugned order dt. 28.12.90 and 7.3.91 issued by the respondent No.2 as illegal, invalid, inoperative in law and be pleased to declare the same as void as is in violation of the principle of natural justice and be pleased to direct the respondents to appoint the applicant as Branch Postmaster at Ved, as per the order of appointment and to pay him salary till the disposal of the application and to grant all consequential benefits..

(B) Be pleased to declare the impugned action of the

respondents cancelling the appointment order
rightly. It is also felt that it is necessary to do so with a view to accomodate Shri Goswami and non
allowing the applicant to resume his duty, as
allowed initially does not entitle him to be allowed to do so. It is illegal, arbitrary and violative of Art. 14 & 16
of the Constitution of India and be pleased to
direct the respondents to consider the applicant
resigned and to now immediately release the respondent
in services from the date of his appointment and
grant salary and other benefits.

(B) Any other relief to which the Hon'ble Tribunal
deems fit and proper in interest of justice.

IX. Interim Relief : No interim relief is granted.

(A) Pending admission and final disposal of the application
be pleased to direct the respondents to pay the last
salary to the applicant from December '90 till date
and further direct to pay regularly to the applicant.

(B) Be pleased to direct the respondents to allow the
applicant to resume his duty as E.D.B.P.M. at Ved
with immediate effect.

(C) Any other relief to which the Hon'ble Tribunal
deems fit and proper in interest of justice.

IX. The applicant has not filed any other application
in any other court including the Hon'ble Supreme Court
of India with regard to the subject matter of this
application. The applicant has no other alternative
remedy available except to approach this Hon'ble Tribunal
by way of this application.

X. Details of Postal Order : No details of postal order

Postal Order No. 801, 866405 Dated : 15-7-91
Issued by : High Court Bar Office amount of Rs 50/-

XI An index in duplicate containing the documents
is produced herewith.

XII List of enclosures as per above index.

Date : 15/7/91
Ahmedabad


(P.H. Pathak)
Advocate for the applicant

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VERIFICATION

I, Shri Hemabhai Kanabhai Chauhan, adult, residence of Ved, Ta. Sami, Dist. Mehsana, have gone through the application and do hereby verify that the contents of para 1 to 12 are true to my personal knowledge and I believe the same to be true and that I have not suppressed any material facts from the Tribunal.

Date : 15/7/91

Ahmedabad



Shri Hemabhai Kanabhai Chauhan

Filed by Mr. P. H. Palla
Learned Advocate for Petitioners
With second set of 2 copies
copy served/not served to
other side

Dt. 16/7/91 in Gaecum
By Registrar C.A.T (P)
A'bad Bench

Department of posts India

C/o The Supdt. of post offices Patan Dn. ~~PKH~~ Patan 384265

Memo No.: B2/33VED/90 dated at Patan the 20-11-90.

Shri Hemabhai Kanabhai Chauhan is hereby appointed as ED BPM/ VED BO in account with so/He wef 27/11/90 He shall be paid such allowances as admissible from time to time.

2. Shri Hemabhai Kanabhai Chauhan should already understand that his employment as EDBPM/EDSPM shall be in the nature of a contract liable to be terminated by him or the undersigned by notifying the other in writing and that shall also be governed by the P&T EDAs (Conduct & service) Rule 1984 as amended from time to time.

3. If these conditions are acceptable to him he should communicate his acceptance in the proforma enclosed herewith.

This order is issued to regularise the provisional order issued under this office memo No even dated

P.M. Patan HO will please avoid double/wrdng or irregular payment.

Supdt of Post Offices
Patan Dn. Patan 384265

Copy to:-

1. The PM Patan HO for information & n/a.

2. The SDI(P) Haraj w/r/t his No PF/ved/90 dtd. 8/8/90

We will please ensure that if the terms and conditions are acceptable to the EDBPM/EDSPM the declaration & letter of appointment in prescribed proforma be obtained and submitted for preservation at this office B1 He will be held personally responsible for failure of this

3. Official through EDBPM/EDSPM
4. EDBPM/ VED BO
5. The SPM Sawani

Done this 20th Nov 1990

Ann-A

H 8

Date :- 30/11/90.

The Supdt. of Post Offices,
Patan Division, Patan 384265.

I, Shri Hemabhai Kanubhai Chauhan acknowledge the receipt of your memo No. B-6/9 B2/33/VED/90 and hereby accept the appointment of B.P.M. VED BO under the specific conditions that my appointment is in the nature of a contract liable to be terminated by notice given in writing.

2. I, further declare that I have read the P&T EDA Conduct and Service) Rules, 1964, & clearly understand that I come liable to the being appointed as B.P.M. VED BO in P & T Dept.

Hemabhai Kanabhai Chauhan
(E.D. Employee)

(DECLARATION)

To:- The Supdt. of Post Offices,
Patan Division, Patan-384265.

I hereby declare that I have read the P & T EDA (Conduct & Service) Rules, 1964 and I clearly understood that I being an E.D. Employees in the P & T Department liable to the provisions & penalties contained in these Rules.

Hemabhai Kanabhai Chauhan
(E.D. Employees)

Place:-Ved.

Date:- 30-11-1990.

Done (00)
Date

Ann-A/1
12 ①

સેવા મે.

શ્રી હેમાભાઈ કાનાભાઈ ચૌહાણ,

મુ.પો. વેડ તા. સની જીલ્લો મહેસાણા.

બિલ/૩૩/વેડ/૬૦

પાટ્ટણ

તારીખ

૨૮/૧૨/૬૦.

વિષાય :- બીપીએમ વેડ ની નિમણુક બાબતે કરેલ નિમણુક
ઓર્ડરનો અમલ મોકૂક રાખવા બાબતે.

ઉપરોક્ત વિષાયના અનુસંધાને આ સાથે જ્ઞાનવાહું કે તમને
આ ઓર્ડરના ઉપર જ્ઞાનવેલ પદ્ધ ક્રમાંક થી તા. ૩૦/૧૧/૬૦ ના ૨૦૪
બીપીએમ. વેડ તરીકે ની એપોટ-ટ્રેટ નો જે હુકમ કરેલ છે તે હેવે
પછી તમને આ ઓર્ડરનો લેખિતમાં બિજો કોઈ હુકમ ન મળે ત્યાં સુધી તેનો
અમલ મોકૂક રાખવામાં આવે છે. જેની નોંધ લેશો.

અધીક્ષક ડાકઘર,
પાટ્ટણ મંડળ, પાટ્ટણ,

સુધીની
સુધીની

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Hemabhai K. Chauhan

VIS.

Union of India & all.

DAF/led/mis-7-91. St NO 315191

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Annexure A/1

To
Shri Hemabhai Kanabhai Chauhan
At & Post : Ved
Ta. Sami
Dist. Mehsana

B2/33/Ved/90

Patan

Date

28/12/90

Subject : Suspension of the appointment order
of BPM Ved

With reference to abovementioned subject, it is informed to you that vide abovementioned appointment letter of this office the appointment given to you on 20.11.90 as BPM Ved is now placed under suspension till the next order is passed by this office. Please take note of it.

Supdt of Post Office
Patan Sub Division ,Patan

True (e)
Dr

Annex A/2
12/11

સેવા મે

શ્રી હેમુભાઈ કાનાભાઈ ચૌહાણ,
મુ.પો.૧૩.તા.સી. જીલ્લો મહેસાણા.

બી/૨/૩૩/વેડ/૬૦

પાટ્ટી તારીખ ૭/૩/૬૧

વિષાય :- પી.એમ.વેડ ની નિમણૂક બાબતો.

આ સાથે જ્ઞાવવાનું કે ડાલમાં બીપીએમ તરીકે ભરતી માટ્ટી તમામ શરતો
સત્તોણી હોઈ તેમને બીપીએમ વેડ તરીકે ચાઢુ રાખવાનું હોઈ, આપને
અમારી ઓફિસમાં પદક્રમાક બી/૨/૩૩/વેડ/૬૦ તારીખ ૨૦/૧૧/૬૦થી બીપીએમ
વેડ તરીકેનો જે હુકમ આપવામાં આવ્યો હતો તે આ સાથે ૨૬ કરવામાં આવે છે.
જેની નોંધ ખેશોજી.

અધીક્ષક ડાક્યર,
પાટ્ટી મંડલ, પાટ્ટી,

ડેસ્કોફી
ફા

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Annexure A/2

To

Shri Hemabhai Kanabhai Chauhan
At & Post : Ved, Ta. Sami, Dist. Mehsana.

B2/33/Ved/90

Patan

Date

7/3/91

Sub : Appointment of P.M. Ved

It is hereby informed to you that as the present
BPM is fulfilling all the conditions for recruitment
to the post of BPM and as we are not required to continue
as BPM Ved, the order issued by this office vide letter
No. B2/33/Ved/90 dt. 20.11.90 appointing you as BPM Ved
is hereby cancelled. Please take note of it.

Supdt. of Post Office
Patan Sub Division, Patan

Praveen
Am

Date:- 27/3/1991

To,

1. Superintendent of Post Offices
Patan Division,
PATAN - 384 265
2. Chief Postmaster General
Gujarat ~~State~~ State
Navrangpura,
AHMEDABAD.

Under the instruction of my client, Shri Hemabhai Kanabhai Chauhan, residence of. Ved, Tal. Sami, Dist. Mehsana, I the undersigned advocate ~~fax~~ inform you by this notice as under :

That to fill up the post of Branch Post Master at Village Ved, you i.e. No.1 has called for the applications from the villagers by placing a notice at the Panchayat Office. That pursuance to the notice, my client has applied for the post of E.D. Br. Postmaster. That after the due selection, my client was found suitable for the post of E.D. Br. Postmaster and he was selected and given the appointment order vide letter dt. 20/11/90. That prior to ~~exp~~ giving the order of appointment, a police inquiry was also held and as my client was fulfilling all the requirements, he was given the order of appointment.

That my client has reported for duty to you i.e. No.1 on 4.12.90 but he was said that as Shri Bhikhupuri Motipuri was working as irregular E.D. Br. Postmaster is on leave, my client has to case again for taking charge etc. That my client has time and again reported you i.e. No.1 to resume his duty to take over the charge but the reason best known to you, you have anyhow delayed it and subsequently vide your letter dt. 28/12/90 informed my client that the order of appointment given to my client is placed under abeyance. I say that there is no provision in law, which employer you to put the order in abeyance. It seems that you want to favour shri Bhikhupuri Motipuri, for the reason best known to you, you have not permitted my client to resume his duty. That again vide letter dt. 7/3/91, you have informed my client that order of appointment dt. 28/11/90 is cancelled. From the above facts, it is prima facie clear that some illegal practice to favour Shri Bhikhupuri Motipuri is adopted by you. That in the interview, my client was ~~client~~ first and so far the police inquiry was concerned, it was also made only with reference to my client.

That my client has made several representations to you, both but it has reached to deaf ears by placing the order in abeyance and subsequently cancelling it, you have adopted totally arbitrary and unconstitutional practice and has acted beyond the jurisdiction. Your action to cancel the order is in flagrant violation of the principle of natural justice and fair play. As per the information received by my client, you i.e. No.1 has taken illegal advantages for favouring Shri Bhikhupuri Motipuri.

PHOENIX - 1030 AM 26 MAY

In these circumstances, by this final notice I inform you that if within 15 days of receipt of this notice you will not allow my client to resume his duty as Extra Departmental Br. Postmaster at Village Ved and will not pay him his salary from Nov. '90, my client shall be constrained to file legal proceeding against you, at your cost and risk.

Pay Rs 151/- as cost of this notice to my client as is to be issued due to your arbitrary, illegal action of ~~xxx~~ cancellation of the order.

Date:- 27/3/1991. **Place:-** **High Court of Gujarat, Ahmedabad.** **Attorneys:-** **Smt. P. H. Pathak (Advocate)** **and** **Smt. K. M. Patel (Advocate)** **for Plaintiff.** **Smt. D. R. Patel (Advocate)** **for Defendant.**

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A/H
Anno 1960

ચોઠાણુ, હેમાભાઈ કાનાભાઈ,
મુપોદું તા. સી.,
જી. મહસાણ.

તા. ૧૧/૧૨/૬૦.

પૂર્ણિ,
અસુંગી. માઈ. (પી),
દાર્શનિ.

વિજાય :- ૧૨૪ પર હાજર થવા બાબત.

સદ્ગ્રાહ :- બીર/૩૩/૧૯૬૦ દ્વારા ૧૧/૧૨/૬૦.

મે. સાહેબો,

સાહેબનું ઉપરોક્ત વિજાય અને વડી ક્યેરી પાણું ના ૪૫૫૫૫૫૫૫

કાચાદ્વાર આદેશ અન્વયે આપ સાહેબને સુવામાં જ્ઞાવવાનું કે હું

તા. ૪/૧૨/૬૦ ના ૨૦૪ ૧૨૪૪૨ જોડાવા ભગ્નું સમાપ્તિપત્ર મોકલેલ

જે અન્વયે હું આજ ૨૦૪ આપ સાહેબની ક્યેરીએ ક્યેરી સમય પહેલાં હાજર

થાડ હું. તો મને હાજર કરવા આપ સાહેબને મારી નમ્ર ભરજ છે.

આમાર સહ,

આપનો વિશ્વાસ્ય,

(ચોઠાણુ હેમાભાઈ કાનાભાઈ)

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Annexure A/4

Chauhan Hemabhai Kanabhai
At & Post : Ved, Ta. Sami
Dist. Mehsana

Date : 11.12.90

To
S.D.I. (P)
Harij

Sub : Allow to resume duty

Ref : B2/33/Ved/90 dt. 20.11.90

Respected Sir,

With reference to abovementioned letter, I have also sent my consent letter dt. 4.12.90 to join my services under you and as per that consent letter, today I am presenting myself to your honour to serve under you. Kindly allow me to resume my duty.

Thanking you,

Yours faithfully,

(Chuahan Hemabhai Kanabhai)

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ત. १४/१२/६०

મે. શી,

સુપરેસ્ટાન્ડિંગ સાહેબ પાટ્ટણ ડિવિઝન પાટ્ટણ.
અરજદાર ચૌહાણ હેમાભાઈ કાનાભાઈ મુ.પો. વેડ તા. સમી
જી. મહેસાણા.

વિધાય :— ચાર્જ બાપવા ભાવેલ છાં ચાર્જ નહી બાપયો.

મારી નમ્રતા પૂર્વક અરજ કે બાપ સાહેબની ઓફિસથી ચાર્જનો
જવાબ મળેલ તે મુજબ જ્માદાર સાહેબ ચાર્જ માટે વેડ તા. १४/१२/६० ના ૨૦૯
ભાવેલ હતા. પરંતુ જ્યારે જ્માદાર સાહેબ વેડ પો. વ્રા-ચમાં ગયો ત્યારે
મને બોલાયો અને તેમણે કહ્યું હું તમને સવારમાં ચાર્જ બાપી દઈશ મને તમાં
દુમની રૂપણ કરી રાખશો.

હું સવારમાં આઠ વાગે વેડ વ્રા-ચ ઓફિસમાં ગયો ત્યારે જ્માદારે
કહ્યું કે જુનો બી.પી.બેમ. દા દિવસની રજા મુકીને અમદાવાદ ગયો છે
તે માણસ હાજર નથી. એટલે તે માણસ ન હોવાથી મારાથી ચાર્જ ન બપાય તે
માણસે હારીજ પો. ઓફિસમાં રજાનો રીપોર્ટ બાપયો મે અનુષ્ઠાનિક
અનુષ્ઠાનિક અનુષ્ઠાનિક અનુષ્ઠાનિક અનુષ્ઠાનિક છે તે જ્માદારે કહ્યું.

સાહેબ શ્રીને જ્યાવવાનું કે તે માણસો હાજર નનો તો અને તેણે રજાનો
રીપોર્ટ બાપયો તો જ્માદાર વેડ કેવી રીતે બાબ્યા તો અને જ્માદારે
કહ્યું કે હું સવારમાં ચાર્જ બાપીશે તથાં મને કહ્યું અને સવારમાં ચાર્જની
ના પાત્ર અને જ્માદાર સાહેબને મે કહ્યું કે તમો ચાર્જ નથી બાપતો. મને
લેખિત બાપતાજાવ તે જ્માદાર સાહેબે મને લેખિત ન બાપયું હું વેડમાં હાજર
હોવાથી અનુષ્ઠાનિક મને બી.પી.બેમ. નો ચાર્જ ન મળ્યો તો અને જ્યારે
જ્માદાર સાહેબ બાબ્યા તે પછી તે માણસ ગઢેલ છે. ચાર્જ બાપવા ભાવવાના
છે તે જાણીને તે ગયાં છે.

તે સાહેબનીને જ્યાવવાનું કે જુના બી.પી.બેમ. ના પિતાશ્રીને કહ્યું હું
જ્યાં સુધી મારો ચુકાદો ના ભાવે ત્યાં સુધી હું ચાર્જ નહી બાપુનું તો મારી
અરજી ધ્યાનમાં ઈં વહેલી તકે ચાર્જ મળવા મહેરબાન કરશો.

હું ગરીબ હરીજન હોવાથી અને હું કેટલા સભયથી ખર્ચમાં જ્યાં છું અને
અમારા ગામે વેડ મને પો. બી.પી.બેમ.નો ચાર્જ બાપવા છાં મે માણસ
હાજર હોય ના હોયતો તે ચાર્જ કોણે સોપેલ ભાવા ભાવા જોટાબાનાં
કાઢે છે મને તાકિદે ચાર્જ નહી મળેતો મારે ધરણા કરવાની ફરજ પડે અને અનુ
મારી એક ગરીબ હરીજનની ઉપર કૃપા કરી મને તાત્કાલિક ચાર્જ બાપવા
મે ધશો.

લિ. બાપનો વિશ્વાસુ,

દિ. ૧૪/૧૨/૬૦

A/H 17
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તા. ૧૩/૩/૬૧.

પ્રતિ, શ્રી, મે. ડી.પી.બેસ. અધિકારી સાહેબ,

ગુજરાત રાજ્ય સર્કલ અમદાવાદ.

વિષાય :- કેદ બીપીબેસ. ની જગ્યામે કરેલ નિમણુંકની અવગાણન કરવા બાબત.

સચિન્ય સહ જ્ઞાવવાનું કે હું અરજદાર હેમાભાઈ કાનાભાઈ ચૌહાણ ગામ વેડ તા.સ્થી નો વતની હું અને આર્થિક રીતે પછાત તેમજ શિક્ષિત બેકાર પણ હું વેદ ગામની બી.પી. બેસ ની હામી જગ્યાની પહેલી જગ્યા ભરવા માટેની અરજી કરેલ અને તમો હું પાસ થયેલ હું મારી કાયદેસરની ઇકવાયરી કરી પોસ્ટ અધિકારીએ મારી નિમણુંકન્યાં કરેલ જેનો એંઝે ઓર્ડર પણ મને તા. ૩૦/૧૧/૬૦ ના ૨૦૪ મણેલ અને મને ચાર્જ આપવા હારીજ ગામની પોસ્ટના અધિકારી પણ આવેલા પરસ્તુ વેદ ની પોસ્ટમાં હામી નોકરી કરવા શ્રી ભિષુપુરી મોતાપુરી ગોસ્વામી કે એંઝો ત્યારે પગવાળા તેમજ આર્થિક રીતે સંધર પણ છે. તેમને ન જાણે પોસ્ટ અધિકારી સાહેબને કેવી રીતે ભરમાંયા કે મને ચાર્જ આપ્યા વગર તેથો પાછા ગયા અને મને તા. ૩૦/૧૧/૬૦ ના ૨૦૪ મણેલ નોકરી ઉપર હાજર થવા માટેના ઓર્ડર લેટસરી અવગાણન કરી તા. ૨૮/૧૨/૬૦ ના ૨૦૪ એક બીજો પગ પાઠ્યાં. જેમાં જ્ઞાવે છે કે જ્યાં કુદી આપ ને લેખિતમાં લાભો ઓર્ડર ન મળે ત્યાં કુદી આપની ફરજ મોકુફ રાખવામાં આવે છે. જેની નકલ આ સાથે આપને જાણ સારુ બીજું હું તો આપ ચાહેબને મારી નમ્ર વિનતી છે કે પાઠ્યાના મેળેલા પત્રની જવાબદારી કર્ણી છે. અને તે લેટર મને થોરય પાઠ્યાં છે. કે કેમ તેજી જાત તપાસ કરી આપ સાહેબ ઘટતું કરાવી મારા જેવા શિક્ષિત બેકારને થોરય -યાય અપાવવા આ સાહેબને હું આગ્રહભરી નમ્ર વિનતી કરું હું.

લિ. આપનો વિશ્વાસુ,

હેમાભાઈ કાનાભાઈ ચૌહાણ,

મુ. વેદ. તા. સીજી. મહેસાણા.

દાખલ કરુન્માં હોય
એવી પણ નથી કે એવી પણ -
એવી એવી નથી

Dec 10/69
V

English
Translation
of
Application

18

Date: 15.12.90

Superintendent Saheb
Patan Division
Patan

Applicant Chauhan Hemabhai Kanabhai, At & Post : Ved,
Ta. Sami, Dist. Mehsana.

Sub : Non allotment of charge, though the Officer has come for the same

That as per your letter regarding taking over the charge, I have reported on 14.12.90 at village Ved, where Jamadar has come to hand over the charge accordingly. But when I was called by Jamadar in Ved Branch P.O. I was told that he will hand over the charge in the next day morning and I may make arrangement of a room.

On next day at about 8.00 O'clock when I went to Branch P.O. Ved, Jamadar told me that my predecessor BPM has proceeded on leave for 10 days and has gone to Ahmedabad and as he is not present, he cannot hand over the charge to me and he has given the report of leave to Harij P.O.

Sir, I informed the Jamadar that if the concerned man from whom I have to take the charge, has submitted a leave report and not present, why Jamadar has come to Ved and yesterday evening I was told by him about handing over the charge on the next day morning i.e. today. The Jamadar has told me that he is not handing over the charge to me and I requested Jamadar Saheb to give me in writing, but the same was refused by him. Though I was very much present and though Jamadar Saheb has come, I was not given the charge of BPM Ved and BPM Ved has got information about handing over the charge.

Sir, father of the earlier BPM has told that till the decision in his case will not come, the charge will not be handed over to me. In these circumstances, kindly take note of my application and see that I may be given the charge at the earliest.

I am poor Harijan and I have to spend money unnecessarily. That though I was required to give the charge of BPM, under the guise of absence of the earlier BPM, which is a false one, I am not given the charge and therefore, if immediately I will not be given the charge of BPM Ved, I shall be constrained to proceed on Dharna and therefore, kindly hear the request of a poor Harijan and do the needful.

Yours faithfully,

Tm 1081

Om

K(19)

Date : 13/3/91

To
Respected D.P.S. Officer Saheb
Gujarat Rajya Circle
Ahmedabad

Sub : Non giving appointment to the
post of BPM Ved

Respected Sir,

I the applicant Hemabhai Kanabhai Chauhan, belong to village Ved, Ta. Sami, educated unemployed candidate of socio-economic backward class. That I have applied for the vacant post of BPM at village Ved, which is temporary one and I was selected. Thereafter my police inquiry was made and I was appointed at village Ved vide order dt. 20.11.90 and I was called at village Ved to hand over the charge and the officer from Harij Post Office had also come to village Ved, but Shri Bhikhupuri Goswami, temporary employee, who is influential and of economical sound position, has anyhow managed. That the Officer has returned back without handing over the charge to me and my rights as per the order dt. 20.11.90 to resume my duty are ignored. That the next letter given to me on 28.12.90 whereby I was informed that the order given to me is placed under suspension till the further order. I am annexing a copy of the said letter for your kind perusal. I request your honour to inquire who is the responsible man for the second letter and whether that letter is given to me properly and by competent authority or not. Kindly do the needful to give justice to a person like me affected unemployed candidate. Again request your honour to do the needful.

Yours faithfully,

Hemabhai Kanabhai Chauhan
Post: Ved, Ta. Sami, Mehsana.

True copy
DMS.

49 (20)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH AT AHMEDABAD.

ORIGINAL APPLICATION NO. 386 OF 1991.

Hemabhai Kanabhai Chauhan.

..... Applicant.

Versus.

Union of India and

others.

..... Respondents.

Written reply on behalf of respondents.

*Recd on 10/4/92
with P.M.
dated on 10/4/92
P.M.*
10/4/92
I, U.C.Mansuri, Desig: Superintendent
of Post Offices, Patan Division, Patan- respondent
no. 2 herein do hereby submit the written reply
to the contents of the application of the applicant
as under :-

1. I say and submit that I am well conversant
with the facts of the present case and I am
competent to file this written reply on behalf of
all the respondents. I say and submit that I am
stating the facts ~~in~~ in this written reply on the
basis of the ~~in~~ information derived by me from
the record of the case and the knowledge which I
possess to the present case.

AS/10/4/92

I say and submit that the present application is neither maintainable in law nor tenable on facts of the present case. Before I deal with the averments made in the application, at the outset, I say and submit that one Shri Bharatkumar Chimanlal Shah was working as Extra Departmental Branch Post Master (EDBPM) upto 14-9-1989 and considering visit of Sub-Divisional Inspector (Postal) Harij on 14-9-1989, Shri Shah was found absent from duty and subsequently he tendered resignation which was considered by the Superintendent of Post Offices Patan after following due formalities. The charge of the post of EDBPM wed was handed over to Shri Bhikhugiri Motipuri Gaushwami on 14-9-1989 temporary till permanent arrangement is made. As per department norms, when ~~xx~~ any one tenders resignation his past work as well as particulars of the departmental dues outstanding are to be verified/ascertained and this process took some time to start procedure for appointment of new EDBPM ~~Wexx~~ vice Shri Shah tendered resignation. As per rules of Extra Departmental Employees (service and Conduct) Rules 1964 for appointment of new EDBPM wed, the nominations were called for from Employment Exchange, Mahesna under this Office No. B.II/33/Wed/89 dt. 1-11-1989. In response to this, only one application of Shri Bhikhupuri M. Gaushwami was received from the Employment Exchange,

Mehsana. Since as per the rules, atleast three names should have been nominated by the Employment Exchange but the Employment Exchange authority sent only one name. This has resulted into further correspondence with the Employment Exchange, Mehsana who furnished three applications of Shri P.M.Solanki, Shri Hemabhai Kanabhai Chauhan and Shri Bhikhubhai C.Patel vide its letter dt. 29-11-1989. The Employment Exchange Mehsana again submitted application of Shri Bhikhupuri M. Gaushwami vide letter dt. 1-12-1989. From the above particulars furnished by all the four applicants, Shri Himabhai K.Chauhan had furnished the information about property movable and immovable on his name or in the name of his father. While others did not mention the particulars and only on this basis, selection on file was made of the applicant purely on ad hoc basis with clear understanding to terminate his service at any time without any notice vide letter No. B.II/33/Wed/90 dt. 20-11-1990. I crave leave to refer to and rely upon the correspondence with the Employment Exchange at the time of hearing of this petition. The delay to decide the case was due to Police ^{VE} clarification of character and antecedent of candidates. The applicant was not taken on duty though he was selected. Since during the inspection of office of the respondent no. 2, Patan, the Director of

Postal Service, Ahmedabad had reviewed the cases of all the appointment of EDBPMS made by the respondent no. 2 including the case of appointment of EDBPMS wed. On verification of papers subsequently received and available on file and got it verified through the Inspecting Officer it was noticed by the Director that Bhikhupuri M. Gaushwami who was working as EDBPM since 14-9-1989 and experience hand of EDBPMS EDBPM wed also possess the same moveable and immovable property alongwith higher education than Shri H.K.Chauhan. On these observations and after getting ~~it~~ verified papers of the four candidates, again Shri Bhikhupuri M. Gaushwami was found suitable for the post of EDBPMS and he was continued to hold the post cancelling appointment order of the applicant who was not taken on duty and who did not work for a single day. Under the above circumstances, the action of the department is quite legal and proper and there was no right whatsoever of the applicant in breach by the respondent. As a matter of fact, issuance of the appointment order was by mistake and does not confirm the right to the applicant for the post. Under the above circumstances, the Hon'ble Tribunal will be pleased to find that there is no substance in this application and the application deserves to be dismissed.

I deny all the averments made in the application except specifically admitted or dealt with by me hereinafter.

2. As regards contents of Para 6.1 of the application, it is submitted that the decision of the High Court which has been referred to is of no application to the present case and the same is also not at all relevant. However legal submissions shall be made in the said connection at the time of hearing by the Counsel appearing on behalf of the respondents. It is submitted that there is no question of complying with the principles of natural justice in the present case. Since the applicant was not found suitable subsequently on review of the selection process, the appointment order of the applicant was not given effect and more suitable candidate was given appointment viz. Shri B.M.Gaushwami. As stated above, on verification and inspection by the Director of Postal Service, the aforesaid mistake was found and the real deserving person viz. Shri Gaushwami has been appointed and the appointment order of the applicant is cancelled. It is submitted that as a matter of fact, the applicant should have joined Shri B.M.Gaushwami as a party respondent to this case and so long as he has not joined Shri Gaushwami as party respondent to this application, the application deserves to be dismissed. It may be stated that for the appointment of EDBPM, the department has to examine the suitability of the candidate considering the ~~and~~ educational qualifications, immovable

and moveable property, income condition, of providing accommodation free of cost or experience of postal work, character and other relevant aspects of the case. In the present case, after raising some query by the Director of Postal Service, Ahmedabad during the inspection, particulars were got verified and it was found that Shri B.M.Gaushwami was working as EDBPM since 14-9-1989 was quite suitable for the post in comparison to the applicant and other candidates and therefore the appointment order issued in favour of the applicant were cancelled subsequently. The applicant has been informed about the aforesaid decision and action of cancelling the appointment order is quite legal and valid.

3. As regards contents of Paras 6.2 and 6.3 of the application, it is submitted that it is true that the applicant is belonging to Scheduled Caste but the same does not give any special waigage for the appointment of Extra Departmental employees. Further the post advertised was not for Scheduled Caste and therefore the same is of no consequence. As per the relevant rules, nomination for appointment as stated above is required to be called for from the Employment Exchange and accordingly it was called and together with

the applicant, names of other candidates were also there. It is denied that the applicant was called for interview at Harij. There is no interview prescribed for appointment of EDBPM. The appointing authority is the respondent no.2 and not the SDI, Harij. However as a formality and to verify character and antecedent Police verification report is necessary before considering and finalising selection process and the same was done in case of the applicant also, since he was one of the candidates for consideration. The selection and the issue of appointment order does ~~not~~ not give any right to the applicant for a particular post unless and until he is taken on duty. In the present case, the action of issue of earlier appointment order was found irregular and subsequently since the said mistake was found while undertaking review, the appointment order issued by mistake was cancelled and the real eligible employee was given appointment. The movements of the applicant described in this paragraph 6.2 regarding taking charge of the post are of no relevancy. Further the cancellation of the appointment order and the ~~xxxxxx~~ issuance of the earlier appointment order both have nothing to do with the Collector, D.S.P and P.S.I. Sami. As a matter of fact, they were only concerned so far as issuance of the character report. I deny all other allegations made in this Para : 6.2 .

4. In para 6.3 of the application, the applicant has repeated the facts stated in Para 6.2 and since I have already dealt with hereinabove, I am not repeating the same so as not to burden record of this Hon'ble Tribunal. As stated above, there is no question of calling for interview to any person either to the applicant or to Shri Gaushwami, the appointment order of Shri B.M.Gaushwami was issued after following the prescribed formalities and there is no question of favouring any person. It is denied that Shri B.M.Gaushwami is favoured in the matter of giving appointment. As a matter of fact since Shri B.M.Gaushwami was found more suitable amongst all other candidates including the applicant while reviewing selection process, appointment order has ~~xx~~ been issued to Shri B.M.Gaushwami and appointment order has been cancelled of the applicant.

5. As regards contents of Paras 6.4 and ~~6.5~~ 6.5 of the application, the allegations made in Para 6.4 are denied. It is denied that the applicant has been sent from pillar to post. It is denied that the action is taken with a view to accommodate Shri Gaushwami. As stated above, there is no question of following the principles of natural justice. It is denied that the applicant had made representation to

respondents nos. 1 and 2 after cancellation of the appointment order. Not a single representation was received by the office of respondent no. 2. The applicant had irregularly lodged Police complaint in Sami Police Station which was replied to the Police Department suitably. It is submitted that nothing has been received except the present application. Since appointment order was cancelled on reviewing the selection process and since earlier appointment order is issued by mistake, there was no question of following the principles of natural justice. I say and submit that in the present facts and circumstances of the case, the question of observing of principles of natural justice does not arise as the applicant had no legal right to the post in question.

6. As regards contents of Para 6.6 of the application, it is submitted that reference to the judgment of the High Court is without giving all the necessary facts and the same is not applicable to the present case. The action to cancel the appointment order was taken after due consideration of all the relevant papers. It is submitted that the applicant cannot take undue benefit of the mistake committed by the department in issuing the appointment order. I deny all other allegations made in this paragraph.

Considering all the facts and circumstances pointed out ~~xxx~~ hereinabove and those may be urged at the time of hearing of this application, the

Hon'ble Tribunal may be pleased to find that there is no substance in this application and the applicant is not entitled to any of the reliefs as prayed in Para 7, much less any interim relief as prayed in Para 8 of the present application. It is, therefore, prayed that the Hon'ble Tribunal may be pleased to dismiss the application of the applicant with costs and the Hon'ble Tribunal may be pleased to direct the applicant to pay the costs to the respondents for defending this application.

Place: Ahmedabad.

Date : 10 -4-1992.

U. C. Mansuri
SUPDT OF POST OFFICES

PATAN DIVISION, PATAN 384265

VERIFICATION

I, U.C.Mansuri Design: Superintendent of Post Offices, Patan Division, Patan- respondent no. 2 for and on behalf of all the ~~opp~~ respondents, do hereby verify and state that what is stated herein this reply are true and I believe the same to be true and correct as per my knowledge, belief and information. I have not suppressed any material facts.

Verified today on this 10 th day of April 1992 at Ahmedabad.

U. C. Mansuri
SUPDT OF POST OFFICES
PATAN DIVISION, PATAN 384265

Identified by me.

S. Patel
Clerk,
To Shri Jayant Patel,
Addl. Central Government
Standing Counsel.

Reply/Recomder/written submissions
filed by Mr. Jayant Patel
earned advocate for petitioner/
Respondent with second
Opposite Counsel advised on her side

10/4/92 By Registered CA T. (J)

MA/15H/260/1882

03/08/82

PH (28)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD.

OA/TA/MA/RA/C.A. NO. MA/212/1992 IN OA/386/1881

Sh. H K Chauhan

APPLICANT (S)

Sh. P. H Pathak

COUNSEL

VERSUS

U.O.I. & Oos

RESPONDENT (S)

Sh. Jayant Patel

COUNSEL

Date	Officer Report	Orders
27/7/92 PHT	Amendment	ACN copy served by other side

Sh. P. H. Pathak

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted:

C.A.T./JUDICIAL SECTION.

Original Petition No:

OA/386/

of

1991

Miscellaneous Petition No:

MA/121/

of

1992

Shri H.G. Chauhan

Petitioner(s)

Versus.

U.O. I & CEs

Respondent(s).

This application has been submitted to the Tribunal by
Shri P.H. Pathak. Adv.

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 Tribunal Act, 1985 and Central Administrative
Tribunals (Procedure) Rules, 1985.

The Applications 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 Advocate may be advised
to rectify the same within 14 days/draft letter is placed below
for signature.

ASSTT: K.H. 3.8.92

S.O. (J): P. Christian 3.8.92

D.R. (J): J.S. 3.8.92

KNP24492.

(26)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

M.A. NO. 1212 OF 1992
IN

O.A. NO. 386 OF 1991

Hemabhai Kanabhai Chauhan

.. applicant

vs

Union of India & ors.

.. respondents

AMENDMENT

That after the respondent No. 2, the following respondent may be allowed to be amended as the judgement which will be rendered by this Hon'ble Tribunal may affect his right and therefore in interest of justice, he may be allowed to join as party.

3) Bhikhupuri Goswami

Branch Postmaster

Village Ved, Ta. Sami

Dist. Mehsana.

Verification may be dispensed with in interest of justice.

1176
Date : 28/7/92

29/7/92
Ahmedabad

1176
Served by Mr.
Learned Advocate for Petitioners
with second set of copies
copies served/..... served to
other side

By the C.A.T.
A Two Bench

(P. H. Pathak)
Advocate for the applicant

29/7/92
Served by Mr.
Learned Advocate for Petitioners
with second set of copies
copies served/..... served to
other side

29/7/92
Served by Mr.
Learned Advocate for Petitioners
with second set of copies
copies served/..... served to
other side

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

Application No. OA/386/91. 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 Record Room (Decided).

Dated : 18/12/92

Counter-signed :

~~Section Officer/Court Officer~~

Ch. Off. 5-1-93

H. C. Hogan
Sign. of the Dealing Assistant

Serial Number of the application

001386/91

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