CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 92 OF 1992

~~T.A. NO.~~

DATE OF DECISION 10-6-1994.

Mr. Rafik Saiyed, Petitioner

Mr. K.C. Bhatt, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent s

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

CORAM

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

The Hon'ble Mr. Dr. R.K. Saxena, Judicial Member.

JUDGMENT

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

No

Rafik Saiyed,
E.D.D.A./C.A.,
Mota Surka H/Q Sihor. .... Applicant.

(Advocate: Mr. K.C. Bhatt)

Versus

1) Union of India through
The Director General
Department of Posts
Ministry of Communication
Parliament Street,
New Delhi - 110 001.

2) The Chief Postmaster General
Gujarat Circle
Ahmedabad - 380 001.

3) The Postmaster General,
Rajkot Region, Rajkot.

4) The Senior Supdt. of Post Offices,
Bhavnagar Division
Bhavnagar.

5) The Asstt. Supdt. of Post Offices,
Bhavnagar Division
Bhavnagar. ..... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A.No. 92 OF 1992

Date: 10-6-1994.

Per: Hon'ble Mr. V. Radhakrishnan, Admn. Member.

Heard Mr. K.C. Bhatt, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondents.

2. The applicant was appointed as EDDA at Mota Surka Headquarters Sihor and he joined duties on 6-12-1989. His services were terminated on 23-4-1991. He submitted appeal to Sr. S.P.O. Bhavnagar against termination but with

no result. The allegation of the applicant is that his services were terminated in order to accomodate a relative of the Asstt. Supdt of Post Offices. The applicant, therefore, challenged the termination which was done without following disciplinary procedure and without following statutory provisions of the I.D. Act. He claims that he was fully qualified for the post and he had completed 507 days of service from 6.12.1989 to 26.4.1991. He quoted several judgments in support of his case. He has claimed the following reliefs:

> "Relief(s) sought:-
>
> In view of the facts mentioned in para-6 above the applicant prays for following relief:-
>
> (i) The order of Asstt. Supdt. of Post Offices, Bhavnagar Sub Dn.No.PF/EDA/Mota Surka dated 23-4-91 be quashed and set aside.
>
> (ii) The respondents be directed to re-instate the applicant immediately and he should be treated as re-instated as on 26-4-91 with all consequential benefits being treated as in job from 26-4-91.
>
> (iii) The respondents ~~please~~ be directed to pay the cost of this application as the applicant is very poor and very low paid servant and belongs to minority community and backward class.
>
> (iv) Any other suitable relief may please be granted."

3. The respondents have filed reply. They have stated that the applicant was appointed purely on provisional and adhoc basis and his appointment was liable to be terminated at any time without giving

reasons or without issuing any notice. As the applicant had accepted these conditions, he can not challenge the termination. The contention of the respondents is that as the applicant's appointment was purely provisional and on adhoc basis, it was not necessary to follow statutory provisions of I.D. Act. They have stated that Shri Sarvaiya who was selected in applicant's place, was fully qualified. They have stated that Shri Sarvaiya has passed 10th Standard but the applicant had passed only 9th standard, Because of certain lacuna in his recruitment, de novo procedure for recruitment was ordered in November 1991.

4. The applicant has filed rejoinder. He denied that he was appointed on provisional and adhoc basis. He has reiterated that he worked for 507 days without any break. He was appointed on a regular post. He has repeated the allegation that he was terminated in order to accomodate the brother of the A.S.P. He has stated that he has sent the appeal to SSP Bhavnagar under Certificate of Posting and produced xerox copies. He has stated that he is fully qualified to hold the post of EDDA. He was registered ~~his name~~ in Employment Exchange. The respondents have given further reply to the rejoinder.

They have stated that even though the post of EDDA was vacant, the applicant was appointed due to urgency as procedural formalities took time for getting the post filled on regular basis and in order to carry on the work, the applicant was appointed on adhoc basis. They have stated that the applicant is not a resident of the village, but he is resident of Songadh.

They have denied that the applicant gave any appeal. In view of the above, the respondents have prayed for rejection of the applicant's Original Application. The applicant has given further rejoinder. He has repeated that he was appointed against the regular vacant post. The appointment of Shri Sarvaiya in place of the applicant was irregular and illegal. The applicant has claimed that he is resident of Sihor.

5. During the arguments Mr. K.C. Bhatt, learned advocate for the applicant stressed on the point that in view of the very judgment of this Bench the Postal Department is treated as Industry and the Industrial Disputes Act applies to them. Hence the termination of the services of the applicant without following legal procedure under the statute, was illegal as the applicant had completed 507 days of continuous service as EDDA. Mr. Akil Kureshi, on behalf of the respondents, pointed

out that the appointment of the applicant was on adhoc and temporary basis and liable to be terminated at any time. He also produced copy of appointment letter dated 3.1.1990 regulating the period of appointment to 90 days. He also pointed out that the judgment of the High Court of Punjab & Haryana in Civil Writ Petition No. 7897 of 22nd July, 1983 stating that the P & T Department is not an Industry and hence provisions of the I.D. Act could not apply to this case.

6. It is seen that the respondents have not denied the fact that the applicant had worked for 507 days before his services were terminated. In the first order, Ann.A-1 there was no period specified by the respondents and in the order dated 3-1-90 produced by Mr. Akil Kureshi during the hearing, it is specified that the appointment will be for 90 days or until the regular appointment is made whichever period is shorter. In this context Mr. K.C. Bhatt, learned advocate for the applicant objected to the production of this document at the hearing stage and alleged that it was an after thought as this document was not produced along with the written statement. Even assuming that this letter was issued the period of 90 days expired on 2-4-90 but still the applicant was continued in service upto 26-4-91 without further order.

Hence it is not possible to accept the contention that the appointment was made for fixed period.

7. It is undisputed fact that the applicant had completed 507 days and hence statutory procedure under I.D.Act like notice and retrenchment compensation should have been followed, as he had completed more than 240 days in the year prior to retrenchment. This was not done in this case and this is a clear violation of the I.D.Act provisions. The respondents have also not taken the argument of P & T Department not being Industry in the written statement. Only during argument Mr. Akil Kureshi pointed out that P & T Department could not be treated as Industry and referred to the decision of the Punjab & Haryana High Court's decision in Civil Writ Petition No. 7897 of 22nd July,1983. This Bench of the Tribunal has all along been holding that the P & T Department is an Industry and hence subject to the statutory provision of the I.D.Act. It has been decided, for example, O.A.No.278/89 decided on 1.10.1991 that the provisions of the I.D.Act would apply to an EDA as he would be a workman as defined in I.D.Act. It has also been decided in the case of R.Padmanabhan Nair V/s. Superintendent of Post Offices, 1993 SLR, CAT Ernakulam Bench, page 610, that even a substitute who was allowed to work in the post office continuously for a long time,

is a workman under the I.D.Act and an action has to be taken as per the provisions of the Act. It is settled law that P & T Department is an industry. Calcutta Bench of Central Admn. Tribunal in Ashok Kumar Sinha Vs. Union of India & others 1989 Lab.I.C. 670 took this view and it was based on the decision of Kerala High Court in Kunjan Bhaskaran and Others Vs. Sub Divisional Officer Telegraphs. Changanessary and Others, 1983 Lab. I.C.135. Ahmedabad Bench of Central Admn.Tribunal also took the same view in M.A.Bukhari Vs. Union of India and Others AIR 1989 (1) CAT 162. It is clear that P & T is an industry and the applicant who was a Extra Departmental Agent - , was a workman. As the applicant has completed more than 240 days in a year prior to his termination, the respondents could not terminate his service without following the provisions of the I.D.Act as it would amount to retrenchment. If the respondents did not want to allow continue the applicant by giving him regular appointment as EDDA, they were entitled to retrench the applicant, but that could be done by following the provisions of Section 25 F of the I.D.Act. In this view of the matter, we hold that the action of the respondents in terminating the services of the applicant was bad in law and it has to be quashed and the applicant is entitled to reinstatement in service as EDDA. Hence, we pass the following order ;

O R D E R

The application is allowed. The order

of the ASPO Bhavnagar dated 23.4.1991 be quashed and set aside. The respondents are directed to reinstate the applicant in service within one month from the date of receipt of this judgment with full backwages. It must be paid within four months from the date of the receipt of this order. The respondents may terminate the services of the applicant, if they so desire, as per the provisions of Industrial Disputes Act. The application is disposed of accordingly. No order as to costs.

(Dr.P.K.Saxena)
Member (J)

(V.Radhakrishnan)
Member (A)

*VTC

All communications should be addressed to the Registrar. Supreme Court, by designation. NOT by name
Telegraphic address :—
"SUPREMECO"

Central Administrative Tribunal
Diary No. 18165
Date 22/02/95

D.No.1883/95/Sec.IX

SUPREME COURT INDIA

Dated New Delhi, the 14th February, 1995 19

FROM
Assistant Registrar,
Supreme Court of India.

TO
The Registrar,
Central Administrative Tribunal,
Bench at Ahmedabad.

PETITION FOR SPECIAL LEAVE TO APPEAL(C) NO.1919 OF 1995
WITH
INTERLOCUTORY APPLICATION NOS.1 AND 2
(Applications for condonation of delay and ex-parte stay)

Union of India & Ors. .. Petitioners
-Vs.
Rafiq Bachubhai Saiyed .. Respondent

Sir,

I am directed to forward herewith for your information and necessary action a certified copy of the Order of this Court dated 13th January, 1995 passed in the matter above-mentioned.

Please acknowledge receipt.

Yours faithfully,

Encl. As above.

Assistant Registrar

OA/92/92

Sup. C—52

IN THE SUPREME COURT OF INDIA

~~CRIMINAL~~/CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL(CIVIL) NO.1919 OF 1995
(Under Article 136 of the Constitution of India, from the Judgment and Order dated 10th June, 1994 of the Central Administrative Tribunal, Bench at Ahmedabad in O.A. No.92 of 1992)

~~No.~~ WITH ~~xx~~ 572872

INTERLOCUTORY APPLICATION NO.1
(Application for condonation of delay in filing the Special Leave Petition)

AND

INTERLOCUTORY APPLICATION NO.2
(Application for stay by notice of motion with a prayer for an ex-parte order)

Certified to be true copy
Assistant Registrar (Judl.)
15/2/1995
Supreme Court of India

1. Union of India, through the Director General, Department of Posts, Ministry of Communication, Parliament Street, New Delhi-110 001.
2. The Chief Post master General, Gujarat Circle, Ahmedabad-380 001.
3. The Post Master General, Rajkot Region, Rajkot.
4. The Senior Superintendent, of Post Offices, Bhavnagar Division, Bhavnagar.
5. The Asstt. Supdt. of Post Offices, Bhavnagar Division, Bhavnagar. .. Petitioners

-Vs-

Rafiq Bachubhai Saiyed,
E.D.D.A./C.A., Mota Surka Head Quarter
Sihor. .. Respondent

13th January, 1995

CORAM:
HON'BLE MR. JUSTICE J.S. VERMA
HON'BLE MR. JUSTICE K.S. PARIPOORNAN

For the Petitioners: Mr. V.R. Reddy, Additional Solicitor General of India
(Mr. K.K. Lahiri, Senior Advocate
(Mr. Krishan Mahajan & Ms. Anil Katiyar, Advocates with him)

....2/-

THE PETITION FOR SPECIAL LEAVE TO APPEAL AND THE APPLICATIONS FOR condonation of delay and for STAY above-mentioned being called on for hearing before this Court on the 13th day of January, 1995 UPON hearing Counsel for the Petitioners herein THIS COURT while directing issue of notice to the Respondent herein to show cause why delay be not condoned and Special Leave and stay be not granted to the Petitioners herein to appeal to this Court against the Judgment and Order of the High Court above-mentioned, DOTH ORDER that pending the hearing and final disposal by this Court of the application mentioned above for stay after notice, the operation of the Judgment and Order dated 10th June, 1994 of the Central Administrative Tribunal, bench at Ahmedabad in O.A. No.92 of 1992 be and is hereby stayed;

AND THIS COURT DOTH FURTHER ORDER THAT THIS ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Aziz Mushabber Ahmadi, Chief Justice of India, at the Supreme Court, New Delhi, this the 13th day of January, 1995.

Sd/-
(K.C. SETHI)
DEPUTY REGISTRAR

SUPREME COURT

~~CRIMINAL~~/CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(CIVIL) NO.1919 OF 1995

WITH

INTERLOCUTORY APPLICATION NO.1
(Application for condonation of delay in filing the Special Leave Petition)

AND

INTERLOCUTORY APPLICATION NO.2
(Application for ex-parte stay)

Union of India & Ors. .. Petitioners ~~Appellant~~ ~~Petitioner~~

-Vs- ~~Versus~~

Rafiq Bachubhai Saiyed .. Respondent ~~Respondent~~

ORDER DIRECTING ISSUE OF SHOW CAUSE NOTICE AND GRANTING AD-INTERIM/EX-PARTE STAY.

DATED THIS THE 13TH DAY OF JANUARY, 1995.

19

Engrossed by

Examined by

Compared with

No, of folios

SEALED IN MY PRESENCE

Smt. Anil Katiyar,
Advocate on Record for the Petitioners.

SHRI
Advocate on Record for

Printed by : Evergreen Printers & Binders Oct. 90, 50,000 Copies

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE 04/92/92 OF 19

NAME OF THE PARTIES MR. R. B. Sayyed

VERSUS

U.O.I. & Ors.

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(191)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

Submitted: C.A.T./JUDICIAL SECTION.

Original Petition No: 92

of 1992.

Miscellaneous Petition No: —

of —.

Shri Rafik Bachubhai Sayyad Petitioner(s)

Versus.

Union of Respondent(s).

This application has been submitted to the Tribunal by Shri K. C. Bhatt.

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:

S.O.(J): 21/2/92

D.R.(J): 24-2-92

KNP181191 24/2/92

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 cppy/copies signed. ?	Yes
12. Are extra copies of the application with annexures filed ?	Yes
(a) Identical with the Original.	
(b) Defective.	
(c) Wanting in Annexures No. _____ Page NOs. _____ ?	
(d) Distinctly Typed ?	
13. Have full size envelppes bearing full address of the respondents been filed ?	Yes
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 ?	Yes
16. Are the transalations 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 No6 of the application ?	Yes
(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

KNP30192.

Checked
24/2/92

ANNEXURE-I.

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

APPLICANT(S) Rafik Bachubhai Sayed

RESPONDENT(S) UOI & ors

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 ?	Yes
(B) Is the application in paper book form ?	Yes
(C) Have prescribed number complete sets of the application been filed ?	Yes
3. Is the application in time ?	Yes
If not, by how many days is it beyond time ?	Yes
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 accompained by D.D./I.P.O. for Rs.50/- ? Number of D.D./I.P.O. to be recorded.	I.P.O. No. 296242
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 ?	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 ?	Yes

...2...

OA/ST-66/92
20/2/92
I.P.O. No. 00 296242
2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH.

OA ~~Stamp~~ No. 92 of 1992.

Rafik Bachubhai Saiyed. ... Applicant.

v/s.

Union of India and others. ... Respondents.

URGENT NOTE

The above named application has been filed on dated 20-2-92.

The applicantis aggrieved of termination of his service.

The applicant and his family are placedin Pitable condition due to abrupt termination of services without any fault.

I undertake to remove all office objections if any found and in the interest of justice, the matter is required tobe posted on board early.

Ahmedabad,

Date. 20-2-92

(K.C.Bhatt)

Signature of (R.B.Saiyed) Applicant.

Signature of the applicant.

CAT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Original Application No. 92 of 1992.

Rafik Bachubhai Saiyed. ... Applicant.

v/s.

Union of India and others. ... Respondents.

Subject title of the case :- Termination of Services.

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1645 Hrs
20.2.92

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Ahmedabad,

Date. 20-2-92

(K.C.Bhatt)

Advocate of the applicant.

Recd on filed
(R. B. Sayyed)
Signature of Applicant

Application under Section 19 of the

Administrative Tribunal Act, 1985.

OA/92/92

Date of filing

Registration No.

Registrar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH.

RAFIK BACHUBHAI SAIYED ... Applicant.

v/s.

(1) Union of India through ... Respondents.

The Director General

Department of Posts

Ministry of Communication

Parliament Street, New Delhi-110 001.

(2) The Chief Postmaster-General,

Gujarat Circle,

Ahmedabad-380 001.

(3) The Postmaster General,

Rajkot Region, Rajkot-360 001.

(4) The Senior Supdt. of Post offices,

Bhavnagar Division,

Bhavnagar-364 001.

(5) The Asstt. Supdt. of Post offices,

Bhavnagar Division,

Bhavnagar-364 001.

1) Particulars of the applicant :-

i) Name of the applicant : Rafik Saiyed.

ii) Name of the father : Bachubhai Saiyed.

iii) Age of the applicant : Adult.

iv) Designation and particulars of the office. : E.D.D.A./C.A. Mota Surka H/Q Sihor.

v) Address for service of notice. : R.B.Saiyed, Ex. EDDA/CA Mota Surka, Via. Sihor 364 240.

2) Particulars of the Respondents :-

i) Name of the Respondent :-)

ii) Name of the father :-)

iii) Age of respondents :-) As per cause

iv) Designation and particulars) title.

of office in which employed.)

v) Office address. 0 As per cause

vi) Address for service of) title.

notice.)

3) Particulars of orders against which application is made :-

The application is against the following order.

A) (i) Order No. : PF /EDA/ Mota Surka.

(ii) Date. 23-4-91.

(iii) Passed by : Asstt. Supdt. of Postoffices, BV West Sub Dn., Bhavnagar.

(Annexture A-3).

B) Subject in Brief :-

The applicant was appointed as EDDA/at Mota Surka H/Q Sihor Vide A.S.P. Bhavnagar No.B2/4/Mota surka dt. 2-12-89 and he joined his duty w.e.f. 6-12-89.

The A.S.P. BV Sub. Dn. Bhavnagar, Shri H.P. Sarvaiya terminated the services of the applic ant and appointed Shri D.P.Sarvaiya the brother of the appointing authority Shri H.P.Sarvaiya.

The applicant submits that his services are terminated vide orders No.PF/EDA/Mota Surka dt.23-4-91.

Without any fault of the applicant, without showing him any reason, without asking any explanation of the applicant, without initiating any action, without taking any action as per provisions of section 25-F ofI.D.Act with total malafide action of Shri H.P. Sarvaiya to accommodate his own brother Shri D.P. Sarvaiya who does not fulfil the required qualification for the appointment.

The applicant submits that he had immediately preferred an appeal to the Sr. Supdt. of Post offices Bhavnagar an appellate authority and he also approached to the Postmaster- General, Rajkot Region, Rajkot and also to the Secy. National Union of EDAS who had also taken this issue at Union Level with the Sr. Supdt. of Post offices Bhavnagar and the Postmaster-General Rajkot Region Rajkot but no authority has taken any decision till today as Shri H.P. Sarvaiya A.S.P. Bhavnagar the appointing authority has appointed his own brother Shri D.P. Sarvaiya. Thus S.S.P. and P.M.G. have indirectly approved the action of the A.S.P. and indirectly rejected the appeal

of the applicant though they have not given anything in writing.

These authorities now-a-days in a practice not to decide any such appeal in writing so that the applicants cannot approach to the Hon'ble Tribunal in time and indirectly harassment to the applicant by all authorities of the Department. Hence the applicant has approached to the Hon'ble Tribunal for justice.

4) Jurisdiction of the Tribunal:-

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

5) Limitation:-

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

6) Facts of the case :-

The facts of the case are given below:-

6.1. The applicant states and submits that the

post of EDDA/CA Mota Surka fall vacant due to invalid retirement of Shri Rajebhai Gulabbhai Saiyed w.e.f. 6-12-1989, and the applicant was appointed as EDDA/CA Mota Surka on vacant post vide A;S.P. BV Dn. Bhavnagar Letter No.B2/4/Mota Surka dated 2-12-89 (Annexture A-1) and joined as E.D.D.A./CA Mota Surka w.e.f. 6-12-1989.

6.2. The applicant states and submits that Shri H.P.Sarvaiya Asstt. Supdt. of Post offices Bhavnagar Sub-Div. Bhavnagar has terminated the services of the applicant, without showing any reasons, without any fault of the applicant, without initiating any departmental actions as per rules, without taking any action under I.D.Act. with total malafide intention and appointed Shri D.P. Sarvaiya his own brother who does not fulfill the required qualifications for the appointment as E.D.DA/CA.

6.3. The applicant states and submits that he is possessing the requisite qualifications for the appointment as E.D.D.A. /C.A. and he also

possess the Employment card and therefor he was appointed by Shri N.R.Trivedi the the A.S.P. Bhavnagar Sub Dn. Bhavnagar. But Shri H.P.Sarvaiya the appointing authority who was transferred from Amreli vice Shri N.R.Trivedi and to accommodate his own brother who is not possessing the requisite qualification for the appointment of EDDA/CA, is appointed vide orders No.PF/EDA/Mota Surka dt. XX 23-4-91 (Annexture A-3).

6.4. The applicant states and submits that he is possessing theEducation qualification of Std. Xth pass while Shri D.P. Sarvaiya whose Education qualification is Std. VI pass.

The applicant submits that he is in possession of Employment card while Shri D.P. Sarvaiya does not possess Employment card.

GROUNDS FOR THE RELIEF.

6.5. The applicant states and submits that he was regularly appointed on clear vacant post of EDDA/CA

Mota Surka H/Q Sihor vide A.S.P. Bhavnagar L.No. B2/4/Mota Surka dated 2-12-89 (Annexture A-1).

6.6. The applicant states and submits that he has worked as EDDA/CA for the period from 6-12-1989 to 26-4-1989 i.e. for 507 days one year three months and 21 days without break prior to the date of termination of his services.

6.7. The applicant states and submits that the action of the Asstt. Supdt. of Post offices Bhavnagar Sub Div., in terminating the services of the applicant, is arbitrary, with malafide intention, to accommodate his own brother, colourable exercise of power hence bad in law and nullity.

6.8. The applicant states and submits that the action of the A.S.P. BV sub Dn. is against the principles ofnatural justice and violative of Article 311 (2) of the constitution of India, violative of Article 14 and16 of the Constitution of India.

6.9. The applicant states and submits that the Hon'ble Supreme Court, Hon'ble High Courts and Hon'ble Central Administrative Tribunals have given

various judgements in this regard. Some of them are as under :-

i) C.A.T. Ahmedabad OA/278/89 decided on 1-10-91.

ii) C.A.T. Ahmedabad A.T.R.Dec.90 Part-12.

iii) A.T.R.Feb.91 Part-2 page 221.

B.S. Chopra & others V/s. Union of India & others in O.A.192/88 decided on 2-5-90.

Termination of services of employees without observing provisions of Section 25-F of I.D.Act is illegal and invaid and the employees continue to be in service and employees continue to be in service and they would be entitled to full back wages.

It is very well established by a series of decisions of the Hon'ble Supreme Court that non observance of the conditions present contained in section 25-F of the I.D.Act renders theorderof termination ab;intio void and such termination orders are obviously non est.

iv) A.T.R.March 91 Part-3 page 267 CAT Ahmedabad in OA 287/88 decidedon 18-4-90.

Termination of casual employee who has continued

in service for more than one year cannot be made without following proper procedure and rules.

v) A.T.J. 1988(1) page 408 supreme Court of India C.A.No.1509 (NL) of 1987 decided on 16-12-87.

vi) A.T.C. 1987 (5) page 435 Supreme Court of India W.P.No.1670 of 1986 decided on 4-12-87 Para-5.

vii) A.T.C.1989 (9) page 357 C.A.T. Madras, O.A. No.759, 669 and 670 of 1987 decided on 12-7-88.

viii) A.T.C.1987 (5) page 180 x para-6.

Retrenchment- Casual labour-Casual labour rendering continuous service for not less than year, Held- cannot be retrenched without complying with section 25-F Industrial Dispute Act,1947.

(ix) A.T.C.,1987 (5) page 228 Supreme Court of India W.P. 373/86, 302/86 decided on 27-10-87. Labour Law-Absorption Daily rated casual labour in P & T. Deptt. doing work similar to ax that of regular worker of the Department-Scheme directed to be made f or absorption of the casual laboourers continuously working in the

Department for more than one year.

7) Details of remedies exhausted :-

The applicant has preferred an appeal on 27-4-91 (Annexture A-4) and also to the P.M.G. by name on 8-1-92 (Annexture A-7). The applicant has also approached to the S.S.P. appellate authority through Union on 7-5-91 (Annexture A-5) and also in themonthly meeting with the S.S.P. on30-12-91 (Annexture A-6). The S.S.P. Bhavnagar and P.M.G. Rajkot have indirectly approved the action of the A.S.P.Bhavnagar Sub. Dn. and indirectly rejected the appeal of the applicant ~~through~~ though they have not given anything in writing and no action or direction are given to the appointing authority i.e. Shri H.P.Sarvaiya the A.S.P. Bhavnagar Sub. Division.

8) Matter not pending with any other Court etc.

The applicant further declares that the matter regarding with this application hs

been made, is not pendingbefore any Court of law or any other authorityor any other bench of the Tribunal.

9) Relief (s) Sought :-

In view of the facts mentioned in para-6 above the applicant prays for following relief:-

i) The order of Asstt. Supdt. of Post offices,Bhavnagar Sub Dn.No.PF/EDA/Mota Surka dated 23-4-91 be quashed and set aside.

ii) The respondents be directed to re-instate the applicant immediately and he should be treated as re.instated as on 26-4-91 with all consequential benefits being treated as in job from 26-4-91.

(iii) The respondents please be directed to pay the cost of this application as the applicant is verypoor and very low paid servant and belongs to minore community backward class.

(iv) Any other suitable relief may pleasebe granted.

10) Interim order if any prayed for:-

The respondents be directed to take the applicant on duty immediately and to continue him on job till the final decision on this application by the Hon&ble Tribunal.

(11) ..... Nil.....

12) Particulars of the Postal order in respect of the application fee of Rs.50/-. No. of I.P.O. DD 2 296242 Bhavnagar collectorate
Dateof issue. 18-2-92 Post office at : Ahmedabad.

13) List of enclosures :-

---- Annexture herewith---

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

I, Rafik Saiyed s/o. Bachubhai Saiyed Ex.EDDA/CA Mota Surka H/Q Sihor age adult, resident of Sihor, do hereby verify that the contents of this application are true to my personal knowledge and belief. I have not suppressed any material facts.

Ahmedabad,

Date. 20-2-92

(R.B.Saiyed)
Signature of applicant.

Identified by me;

(K.C.Bhatt)
Advocate.

Filed by Mr. K.C. Bhatt
Learned Advocate for Petitioners
with second set &. file spares
copies copy served/not served to
other side

Dt. 20,2-92

Dy.Registrar C.A.T.(J)
A'bad Bench

Reply/Rejoinder/written submissions
filed by Mr. .....
learned advocate for petitioner/
respondents with second set.
copy served/not served & other side

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

A-1

पत्र-संख्या-22
Corr.-22

A-1

14

भारतीय डाक विभाग
DEPARTMENT OF POSTS

उत्तर देने समय कृपया लिख लें
In reply please quote

From
सेवा में
To

જામનગર પશ્ચિમ પેટા વિભાગ
જામનગર - ૩૬૬૦૦૧

પત્ર સંખ્યા Corr-22/ગારા સેરસા
दिनांक Dated at જામનગર તારીખ ૨-૧૨-૮૮

विषय
SUBJECT

શ્રી રાજેશભાઈ ગુલાબભાઈ સૈયદ, ઘડીએ ગારાસુરકા બાઈક કોલોર સ.સો.ઓ ખાતે એક્સ્ટેન્શન-કાઉન્ટર પોસ્ટમાસ્ટર જામનગરનું તા. ૨૫-૧૧-૮૮નું આકસ્મિક દાઝવાથી અવસાન થતાં ખાલી પડેલી જગ્યાએ તાત્કાલિક અસરથી ચંદ્રેશ પોપટભાઈ મકવાણા દ્વારા ચલાવવામાં આવે છે.

પોસ્ટમાસ્ટર કોલોરે કામચલાઉ વ્યવસ્થા તરીકે શ્રી રશીદ અ. સૈયદ S/o ઈકબાર સૈયદ ને પોકરી ઉપર મારી શ્રી રાજેશભાઈને તાત્કાલિક દૂર કરતા. શ્રી રશીદની નિમણૂંક નહિ કામચલાઉ રૂપે તેમને કોઈ પણ કામે દૂર ન થવાનું જણાવું.

વતી
જામનગર પશ્ચિમ પેટા વિભાગ
જામનગર ૩૬૬૦૦૧

નકલ રવાના

(૧) શ્રી સ.પો.ગા. કોલોર
(૨) શ્રી પ્રાયોગ ગારા સુરકા (કોલોર)
(૩) શ્રી રાજેશભાઈ ગુલાબભાઈ સૈયદ, ગુ.કોલોર (પાળ)

English translation on next page.

TRUE COPY

K. C. BHATT
B.A. LL.B, ADVOCATE

A-1

15

English Translation of letter No. B2/4/Mota Surka dated 02-12-'89 from Asstt. Supdt. of post office Bhavnagar Sub Dn., Bhavnagar.

- - - - - - - - - - - -

It is hereby ordered to relieve Shri Rajebhai Gulabbhai Saiyad EDA Mota Surka Line, Sihor S.O. has produced medical unfit certificate of Board of Referies - Shital Hospital, Bhavnagar for voluntary retirement.

The sub-post master Sihor will take up Shri Rafiq B. Saiyad C/o B. R. Saiyad on service and relieve Shri Rajebhai immediately.

The appointment of Shri Rafiq is temporary and he will be discharged at any time.

sd/
(N. R. TRIVEDI)
Asstt. Supdt. of Post Offices
Bhavnagar Sub-Division
Bhavnagar.

Copy to :

i) The S.P.M., Sihor

ii) The B.P.M. Mota Surka, Sihor

iii) Shri Rajebhai Gulabbhai Saiyad, Sihor.

TRUE COPY
K. C. BHATT
B.A. LL.B, ADVOCATE

A-2 A-2 16

સા. મુ.ખા.-(આર.)-૫૭૨-૬,૦૦,૦૦૦-૫-૮૭.એમ-૫૦-૫૫ (સુ.)

X [illegible] ઓળખ પત્ર

(આ પત્ર ગેડરીએ સૂચનાર સમક્ષ મુલાકાત માટે લાવો)

૧. વ્યવસાયનું નામ [illegible]

૨. નોંધણી તારીખ [illegible]

3. નોંધણી નંબર [illegible]

૪. વ્યવસાય સૂચિ નંબર [illegible]

(N. C. O. No.)

૫. વ્યવસાયનું નામ

૬. ગેડરીએ વ્યવસાયની વિગત;

(અ) તારીખ _____ વ્ય. સૂચિ નં. _____

વ્યવસાયનું નામ _____

(બ) તારીખ _____ વ્ય. સૂચિ નં. _____

વ્યવસાયનું નામ _____

(ક) તારીખ _____ વ્ય. સૂચિ નં. _____

વ્યવસાયનું નામ _____

ઉપરનાર માટેની સૂચના

૧. આ કાર્ડની ખોવાયાની વા ખાડે આ ઓળખ-પત્ર ખોવાયાના પત્ર વ્યવસાયનાં પણ નોંધણી નંબર અને વ્યવસાય સૂચિ નંબર જાહેર કરવાં.

૨. તેવનાર કાર્ડની ખાતે નમાસા અધિકૃત કાર્ડ ઉપર પોતાની તેવાંક સાપમાત/ચાનુભવના આધારે જે ગેડરીએ વ્યવસાયની નોંધ કરવામાં આવે તે વ્યવસાય માટે તે તારીખની અરજદાર ગણાય.

નીચે દર્શાવેલ મર્યાદામાં નોંધણી તાજી નહીં કરાવેલ તો નોંધણી રદ થશે.

[illegible]

English translation

Employment Identity Card.

Name. Saiyed Rafikbhai B.

Registration Date 17-10-89

Registration No. 71(2)/G

Oct. 92.

TRUE COPY

K. C. BHATT

B.A. LL.B. ADVOCATE

A.3

17

पत्र-व्यवहार-7/Corr.-7

भारतीय डाक विभाग/DEPARTMENT OF POSTS INDIA

कार्यालय/Office of the

सहायक अधीक्षक डाकघर

भावनगर पश्चिम उपमंडल

Asstt. Supdt. of Post Office

Bhavnagar West Sub-Division

BHAVNAGAR-364 001

To

The S.P.M.

SIHOR

(364001)

No PF/LDN/Mokhsh-Bo/91-
-3-1-91.

Sub: Sale of Land
Mokhsh-Bo HO
Sihor SO.

Ref: No Encumbrance

[illegible]

Legible Copy on next Page.
and it is also post certified and attested
by S.P.M. Sihor

This copy is illegible hence
Legible copy is obtained
and kept on Page no. 19.
duly attested by S.P.M. Sihor

TRUE COPY
K. C. BHATT
B.A. LL.B, ADVOCATE

A-3

A-3

19

COPY of A.S.P.Os. BV West Bhavnagar
Letter No PF/EDA/Mota Surka Dtd. 23-4-91

By Regd.

O/O The A.S.P.Os.
BV West Sub Dn,
Bhavnagar 364001.

To:- The S.P.M.
Sihor.
364240.

No PF/EDA/Mota Surka BV. Dtd. 23-4-91.

Sub:- Selection of EDDA/CA Mota Surka B.O
H/Q Sihor S.O.

Ref:- No Previous.

In C/W above Shri Dhanjibhai Premjibhai Sarvaiya of Mota Surka B.O. village is Selected as EDDA/CA Mota Surka B.O H/Q Sihor with immediate effects. He may be taken up as EDDA/CA Mota Surka B.O. terminating the present arrangement made vide this office No. B2/41 Surka Dtd. 3-1-90- of Shri Rafik Bachubhai Saiyed.

Necessary Security bond and C.Rs. may be furnished to this office.

Candidate may be given clear understanding that he is Selected at Present on provisional till pre appt. papers Completed.

Sd.
(H.P. Sarvaiya)
Asstt. Supdt. of P.Os,
BV. West Sub Dn,
Bhavnagar 364001.

Pested
(S.O.)
SIHOR-364240
22-7-91

TRUE COPY
K. C. BHATT
B.A. LL.B. ADVOCATE

FROM

R. B. Saiyed

EDDA/CA Mota Surka B.O.

H/A. Sihor.

A-4 A-4

Date. 27-4-91

To

The Sr. Supdt. of Post offices
Bhavnagar Division Bhavnagar. 364001

Sub:- Appeal against mala fide termination of services EDDA/CA Mota Surka vide A.S.P. BV. Dn. Bhavnagar No. PF/EDA/ Mota Surka dated 23-4-91. case of Shri R.B. Saiyed.

Respected Sir,

I R.B. Saiyed Ex. EDDA/CA Mota Surka (Sihor) most respectfully beg to lay down the following few lines for your consideration.

I was appointed as EDDA/CA Mota Surka B.O. H/A Sihor vide A.S.P. BV. Dn Bhavnagar vide no B2/4/. Mota Surka dated 2-12-89 as my grand father Shri Rajebhai Gulubhai Saiyed EDA Mota Surka was retired on invalid medical certificate w.e.f. 5-12-1989 and I was appointed and joined on purely vacant post due to retirement of my grand father. Thus I was working as EDDA/CA Mota Surka on vacant post w.e.f. 6-12-1989 to 26-4-91 i.e. for 507 days one year 3 months & 21 days continuously without any break.

Shri H.P. Sakraniya A.S.P. Bhavnagar has terminated my services without giving me any reasons and Shri D.P. Sakraniya is appointed vice me.

I may therefore be reinstated with pay and allowances from the date of my relief 6.12.89 to the date of my reinstatement.

Copy to the Postmaster-General Rajkot Region Rajkot.

Yours faithfully

(R.B. Saiyed)

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K. C. BHATT
B.A. LL.B. ADVOCATE

NATIONAL UNION OF POSTAL EMPLOYEES

B.P.M. & E.D.A.S.

BHAVNAGAR BRANCH BHAVNAGAR-364001

Secretary : J H Shah. President ;

Ref No. :- NU/EDA/5 Date :- 7.5.1991.

To,
The Sr. Supdt. of Post offices,
Bhavnagar Division Bhavnagar.

Subs-Alleged misuse of power/position by ASPOs, Bhavnagar West S/Dn. Bhavnagar in irregular appointment of his brother as EDA Mota Surka BO of Sihor S.O.

Respected Sir,

Kindly recollect discussion during monthly meeting of 2nd instt.

1) Shri R B Saiyed was working as EDA Mota Surka B.O. for last 17 months. His appointment took place on humanitarian ground as his grand father was working as EDA Mota Surka BO During his 17 months' service there was not a single complaint against him.

2) Shri R B Saiyed is having an Employment Card registered at serial No. 31/71(2)-C-6 (xerox copy enclosed).

3) He has passed Std. Xth which fulfils prescribed educational requirement for appointment of EDA (xerox copy enclosed).

4) He is a resident of Sihor which is head quarter of EDA Mota Surka (post in question) and his salary being paid through Sihor S.O.

Sir, looking to the above facts we feel that Shri Sarvaiya, ASPOs Bhavnagar West S/Dn. Bhavnagar has misused his position in appointing his brother in place of Shri R B Saiyed. It is highly immoral, even he has not observed minimum decorum of his post. As per convention of the Department even during the examination a certificate has to be tendered that, "no near relatives are appearing in the examination" by all the invigilators. In this case he has appointed his own brother which is highly improper. He has not shown even scant respect for the dignity and decorum of his office, (ASPOs, Bhavnagar West S/Dn. Bhavnagar).

Furthermore, Shri D P Sarvaiya is not fulfilling minimum requirement for appointment as he is only Std. VIth passed and he is not having a valid Employment Card which clearly shows

.. 2 ..

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K. C. BHATT
B.A. LL.B. ADVOCATE

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shows that special favour and nepotism have been practised I am quoting epigram of World renouned author, Eric Frame in his book "Animal Farm", "All are equals, but some are more equals than others". Sir, we want all equals.

In view of our above submission we feel Shri Saiyed is deprived of natural justice though he possesses high and better qualifications than the present appointee and should be appointed regularising the appointment made.

We therefore, request you to look into the matter personally and do needful at the earliest.

Thanking you,

Yours Faithfully

(J H Shah).
Secretary
NU EDA/BPM, Bhavnagar.

Copy to :

1) Shri C B Parmar, Circle Secretary National Union, Gujarat Circle, at Palanpur.

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K. C. BHATT
B.A. LL.B. ADVOCATE

Minutes of monthly meeting with National Union BPM & EDA Bhavnagar was held on 30-12-91 at 17-00 Hrs. in the chamber of SSPOs, Bhavnagar.

The following were present :-

A-6

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(1)	Shri K.A. Vyas	SSPOs, Bhavnagar
(2)	Shri C.A. Prajapati	ASP (HQ) Bhavnagar
(3)	Shri M.M. Nanjee	
(4)	Shri V.S. Nimbark	President EDA (Rtd. MD)

The following items were discussed :-

(1) Despatch of mails of 7 BOs of Shetrunji Dam.

- This will be takenup again with the S.T. Authority.

(2) Issue of appointment order in case of EDA Surnivas and Vadia.

- Detailed report from concerned SDI(P) will be called for.

(3) To fix allowances for five hours as per duty Hrs. case of EDA Bhandaria (Palitana) and Rupavati (Gariadhar).

- Both the cases will be reexamined.

(4) Transfer the work of Rajasthali B.O. to Vadia BO which was previously alloted to EDA Senjalia BO.

- As per the public complaint since 25-1-89 and the Khijadia village work transferred to Mokhadka BO w.e.f. 25-1-91 and it is not possible to transfer the village in Senjalia due to over night detention of mails. (I/C)

(5) To fix pay of Shri B.J. Trivedi EDA Vijapadi for 5 hrs.

- The case is under correspondence.

(6) To reduce the duty hours from 7 hrs. to 5 hrs. as per rules, case of Shri P.N. Danidharia EDA Khari/Bhadrod.

- The matter is under examination.

(7) Conveyance of bags of Nadida BO & Motivadal BO through S.T. Bus.

- As per this office record mails conveyad by S.T. M.S.

(8) Grant of gratiuty to Ex-EDA Motasurka (Sihor).

- Sanction has been issued by R.O. on 20-12-91 and sent DAD Nagpur for payment order. (I/C)

(9) Shri D.G. Karmani EDA Rova BO Sanosra SO is not getting allowance for 5 hrs. as per working hrs.

- This will be examined.

(10) To issue appointment orders to EDDAS/BPMs who has passed Postman examination.

- The matter is subjudice. The same will be decided on out come of issue.

(11) To give copy of seniority list of ED BPM and EDDA in the Dn.

- The gradation list of E.D. Employees is under preparation.

(12) Removal of Shri R.B. Saiyad E.D.A. Mota Surka(sihor) by ASPOs IV West. S/Dn.

- Denovo procedure is already ordered. (I/C)

contd at .. 2 ..

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K. C. BHATT
B.A. LL.B. ADVOCATE

A-7 A-7 A-7

24

R B Saiyed
Mota Surka
Ta : Sihor
Dist. Bhavnagar
Dt. 8/1/1992

To
Shri I.M.G.Khan
Postmaster General
Rajkot Region
Rajkot

Sub : Irregular appointment as EDA Mota Surka in place of me

Respected Sir,

I the undersigned was appointed as EDA Mota Surka vide ASP(W) Bhavnagar No. B2/Mota Surka dtd. 2/12/89 and I worked as EDA Mota Surka for 17 months. My appointment was made on humanitarian grounds as my grandfather was working as EDA Mota Surka BO. During my 17 months' service, there was not a single complaint against me.

I am also having Employment Exchange Registration Card No. 81/71(2)-C-6 and have also been fulfilling the prescribed educational qualification requirement for appointment as EDA, as I have passed Std.Xth (SSC). Further, I am a resident of Mota Surka.

All of a sudden, after 17 months of my service, I was relieved from the service and surprisingly younger brother of Shri Sarvaiya, ASPOs, Bhavnagar West S/Dn. Bhavnagar Mr D P Sarvaiya was appointed vide his own i.e. ASPOs BV West Sub Dn. Office Order No. PF/EDA/Mota Surka/BV dtd. 23/4/91 and my services were terminated without assigning any reason. Thus ASPOs West S.Dn. Bhavnagar misused his position in appointing his brother. Not only that, but Mr D P Sarvaiya, the present EDA of Mota Surka is not fulfilling minimum requirement of qualifications, as he is only Std. VI passed and also do not possess a valid Employment Exchange Registration Card at the time of appointment. Thus, by using his good offices and making special favour and nepotism, an eligible candidate like me has been made without job.

In this connexion, I also represented to the SSP Bhavnagar vide my representation dtd. 7/5/91 with no fruitful results.

In view of above, I most humbly request your honour to kindly deign into the matter and impart me with justice by appointing me on the post of EDA Mota Surka and also club my previous service of 17 months alongwith my appointment.

Thanking your honour and hoping to be favoured with kind consideration.

Yours faithfully,
2/12-(R.B.Saiyed)
(R B Saiyed)

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K. C. BHATT
B.A. LL.B. ADVOCATE

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A-8

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00 6 0 13

10/1/92

Registered

Letter/~~Postcard/Packet/Parcel~~

Shri I. M. G. Khansaheb,
C/O The P. M. G.
Rajkot Region
Rajkot 360001.

13/1/92

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K. C. BHATT
B.A. LL.B. ADVOCATE

3

26

R.P. 34

भारतीय डाक विभाग

भारतीय डाक सेवा

DEPARTMENT OF POSTS, INDIA

सीहोर 364240
SIHOR
BHAVNAGAR DISTRICT

सीहोर SIHOR
364240
16-1-92
DELY
BHAVNAGAR

Sender's Name

R.B. Saiyed.
E.D.A.
Mota Suzka.
Sihor 364240.

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K. C. BHATT
B.A. LL.B. ADVOCATE

1.

A-9

27

J H SINGH
PH. 8110364001
NUEDA/21

27.4.

પ્રતિશ્રી
[illegible] પત્ર [illegible]
[illegible] [illegible]

વિષય. [illegible] [illegible]
રીફ. [illegible] પત્ર D 21301 [illegible] 12.4.21

મી. [illegible] NUEDA/BPM [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible]

(2) [illegible] [illegible] [illegible]
મી. [illegible] EDA [illegible] [illegible]
[illegible] SO [illegible] ASPI [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] 12 [illegible] 12.TU [illegible]
[illegible] 24 [illegible] છે.

[illegible]

English translation
on [illegible]

મંત્રી
નિયમિત [illegible]
[illegible]

TRUE COPY
K. C. BHATT
B.A. LL.B, ADVOCATE

A-9

J. H. Shah
P.A. BV.H.O. 364001

29-04-1991.

To,

The sr. Supdt. of Post office,
Bhavnagar Division,
Bhavnagar.

Sub : Monthly meeting Agenda.

Ref. : Your letter No. D2/30 Union dt. 12-04-1992.

It is requested to add the following item as immergent case in the agenda submitted on 22/4 for monthly meeting of NUEDA/BPM.

5) Without showing any reason, Shri R. B. Saiyed EDA Mota Surka, sihor. So whose continuous service of 17 months (2/28-12-'89 to 25-04-'91) is discharged by A.S.P. West Dn.

J. H. Shah
Secretary
National Union BPM/EDA
Bhavnagar Branch, Bhavnagar.

TRUE COPY
K. C. BHATT
B.A. LL.B, ADVOCATE

COURT FEE 2 Rs. भारत INDIA दो रुपये TWO RUPEES

COURT FEE 2 Rs. भारत INDIA दो रुपये TWO RUPEES

Advocate:- P. No. G/1183/62

K. C. BHATT
B.A. LL.B, ADVOCATE
8, MINA FLATS
OPP. RADHA VALLABH MANDIR
JAWAHAR CHOWK ROAD,
MANINAGAR, AHMEDABAD-8.

VAKALATNAMA

IN THE C.A.T. COURT AT Ahmedabad

No 92 of 1992

Rafiq Bachubhai Saiyed — Appellant / Petitioner / Applicant / Complainant / Plaintiff

V/s.

Union of India & others: — Respondent / Opponent / Accused / Defendant

I/We the undersigned Appellant / Petitioner / Applicant / Complainant / Plaintiff / Respondent / Opponent / Accused / Defendant do hereby appoint and retain K. C. BHATT B.A. LL.B. ADVOCATE Advocate to act, appear and plead, to deposit money in the court or to withdraw the money from the court, to receive money from defendant outside Court for me/us in the above Petiton/Appeal/Application/Case/Suit to conduct and prosecute the same and all proceedings that may be taken in respect of any application connected with the same, to instruct other Legal Practitioner and to do all other acts which may be necessary in the course for the prosecution of the said cause & execution proceedings till the satisfaction of decree. I/we assure that, it is my/our responsibilities to appear in the Court at every adjcurnments and to make the assurances of other adjournments of this case. In witness thereof I/We have put my/our signature hereunder.

Dated this the 19th day of Feb 1992

ACCEPTFD BY

KCBhatt

K. C. BHATT
B.A. LL.B. ADVOCATE
Advocate

8, MINA FLATS
OPP. RADHA VALLABH MANDIR
JAWAHAR CHOWK ROAD,
MANINAGAR, AHMEDABAD-8.

Signature :

X રફીક બચુ સૈયદ

(R. B. Saiyed)

29

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

ORIGINAL APPLICATION NO.92 of 1992.

R.B. Saiyed. Applicant

v/s.

Union of India & Ors. Respondents.

Written Reply on behalf of the respondents.

I, H.B. Chauhan working as Sr. Supdt. of Pos Bhavnagar in the office of the respondent No. 4 herein, do hereby in reply to the above mentioned original application state and submit as follows :

Received on 17-7-92 Keshav Advocate for applicant

1. I have perused the relevant papers and files pertaining to the above application and I am conversant with the facts of the case. I am authorised to file this reply on behalf of the respondents herein.

2. At the outset I say and submit that the application is misconceived, untenable and requires to be rejected.

1736 24/7/92

3. At the outset I say and submit that no part of the application shall be deemed to have been admitted by th the respondents unless specifically stated so herein. All the statements, averments and allegations contained in the application shall be deemed to have been denied by the

30

respondents unless specifically admitted by me hereinafter.

4. At the outset I further say and submit that the applicant was appointed purely on provisional and ad-hoc basis and his appointment was liable to be terminated at any time without giving reasons or without issuing any notice. I say that the applicant had accepted his appointment on the post ~~of~~ in question on the said basis and he therefore, cannot now challenge the termination effected by the respondent-authorities. It is further submitted that the applicant was appointed on provisional basis without going through the regular formalities of selection process and the applicant's appointment therefore, was purely ad hoc in nature and was liable to be terminated at any time without assigning any reason.

5. In reply to para-3(B) of the application I say that the applicant had made incorrect statement in this paragraph. I say that the applicant has made false statements deliberately witha view to misleading this Honourable Tribunal and the application is required to be rejected on this ground alone. It is submitted that it was not required to follow the procedure prescribed under section 25F of the Industrial Disputes Act, 1947, in the case of the applicant in view of the fact that the applicant's appointments was purely provisional and of ad-hoc nature. It is denied that the applicant's appointment was terminated with mala fide intention to accommodate Shri D.P.Sarvaiya. It is denied that said Shri D.P.Sarvaiya does not fulfil the required qualification for the appointment in question.

It is specifically denied that the applicant had made any appeal to the Senior Superintendent of Post Offices, Bhavnagar as alleged in the said paragraph. I say that the applicant has made a false statement in this regard. It is submitted that the alleged appeal dated 27.4.1991 claimed to have been made by the applicant through the S.S.P.Os Bhavnagar Division, Bhavnagar is not received by the respondents till this date and the applicant has made false statement deliberately with a view to misleading this Hon'ble Tribunal on this points. It is pertinent to note that the applicant who has made an application to the Postmaster General, Rajkot Region, Rajkot on 8.1.1992 has not mentioned about the said appeal dated 27.4.1991 alleged to have been made to through the S.S.P.O.? Bhavnagar Division, Bhavnagar, which clearly establishes that the applicant has never made any appeal dated 27.4.91 as claimed by him. I therefore, submit that the applicant has thus not availed of the departmental remedies available to him and on this ground also the application is required to be rejected. It is further submitted that as stated earlier the applicant's appointment was provisional and ad hoc a and liable to be terminated at any time without assigning any reason. I say that the applicant's services were terminated when Shri D.P.Sarvaiya, who is a Scheduled Caste candidate had been selected and appointed provisionally vide order dated 27.4.1991 as he was fulfilling the required qualifications for the appointment. I says that said Shri D.P.Sarvaiya was appointed on the post in question after following prescribed recruitment procedure. It is also pertinent to note that the applicant who is questioning the appointment of said Shri

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D.P.Sarvaiya has not joined him as party-respondent to the application. Under the circumstances I submit that the present application deserves to be rejected on the ground of non-joinder of necessary party.

6. In reply to paras-4 and 5 of the application I deny that this Hon'ble Tribunal has jurisdiction to try the present application or that the same is filed within the period of limitation prescribed under law.

7. In reply to para-6.1 of the application I say that the contents of the same are incorrect and I deny the same. I say that the post of Extra Departmental Agent, Mota Surka, H.Q. Sihor had falled vacant due to invalid retirement of one Shri R.S.Saiyed. The applicant was appointed provisionally with effect from 6th December 1989.

8. In reply to para-6.2 of the application I say that the contents of the same are incorrect and I deny the same. I say that the applicant's appointments was provisional and purely ad hoc basis and liable to be terminated at any time without assigning any reasons. I say that provisional appointment was liable to be discontinued also in the event of regular appointment being made on the said post. It is denied that the action on the part of the respondents is mala fide. It is further denied that said Shri D.P.Sarvaiya does not fulfil the required qualification for appointment as Extra Departmental Agents. It is submitted that said Shri D.P.Sarvaiya is a sche uled caste candidate.

9. In reply to para-6.3 of the application I say that the contents of the same are incorrect and I deny the same. I deny that the applicant possesses

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requisite qualifications for the appointment as E.D.D.A. C.A I say that the applicant is residing at Songadh Village and not at Mota Surkha or Sihor. A copy of the written statement dated 4.3.1992 of Shri B.R. Saiyed, Sihor S.O., father of the applicant is annexed hereto and marked Annexure-R1. I say that as per the Regulations the Extra Departmental Mail Carrier should reside in the station of the Main Post Office or at the place from where mail originated or terminated. i.e they should be permanent residents of the delivery jurisdiction of the Post Office vide Rule 5(ii) of Section-II of the Method of Recruitment of posts and Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964. The E.D.D.A./C.A. Mota Surkha H.Q. at Sihor is conveying mails from Sihor Sub-Post Office to Mota - Surkha Branch Post Office and vice versa and effects delivery of the mails at Mota Surkha village under the said BranchOOffice. It is submitted that said Shri D.P.Sarvaiya had passed 10th Standard i.e. old S.S.C. fail, whereas the applicant has passed only 9th standard. The applicant is thus not eligible to hold the post of E.D.D.A./C.A. Mota Surkha. It is denied that the applicant was appointed provisional for his possessing employment card. It is denied that said Shri D.P.Sarvaiya possesses lower educational qualifications than the applicant. I say that said Shri D.P.Sarvaiya is a Scheduled caste candidate and looking to the shortfall of percentage of reservation also the selection of said Shri Sarvaiya is justified. It is however, submitted that on account of certain lacuna in the procedure of recruitment de-novo procedure for recruitment is ordered

vide order dated 18.11.1991. However, this does not mean that the applicant is eligible for the appointment in question nor does the termination of the applicant become invalid.

10. In reply to para-6.4 of the application I saya that the contents of the same are incorrect and I deny the same. It is submitted that the applicant possesses 9th standard pass vide his own application dated 23.11.85(copy at Annexure-R2) where as said Shri D.P. Sarvaiya has passed 10th standard. Hereto annexed and marked Annexure R3 is a copy of the certificate of said Shri D.P.Sarvaiya showing that he has passed 10th standard examination. I say that the applicant's possessing Employment Card does not give him any right to be appointed on the postin question.

11. In reply to para-6.5 of the application I say that the contents of the same are incorrect and I deny the same. I deny that the applicant was regularly appointed on the post in question. I say that the applicant's appointment was provisional and ad hoc basis.

12. In reply to para-6.6 of the application I saya that the applicant's tenure on the said post does not give permanency and his appointment was purely provisional and of ad hoc nature.

13. In reply to para-6.7 of the application I saya that the contents of the same are incorrect and deny the same. I deny that the action on the part of the respondent authorities in terminating the services of the applicant is arbitrary or with mala fide intention or the same is colourable exercise of power or is bad in law.

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14. In reply to para-6.8 of the application ~~I says that the applicant's terms~~ I deny that the action of the respondents is against the principles of natural justice or is violative of Articles 311(2) or Articles 14 & 16 of the Constitution of India.

15. In reply to para-6.9 of the application I say that the decisions cited by the applicant are of no relevance in the present application. It is denied that the provisions of Section 25P of the Industrial Disputes Act, 1947, are not followed or that therefore, the action of the respondents is illegal or invalid. I deny that the applicant is entiled to back wages. I say that the applicant who is invoking provisions of Section 25P of the Industrial Disputes Act, 1947, is required to be relegated to the Industrial Forum.

16. In reply to para-7 of the application, I say that the contents of the same are incorrect and I deny the same. As stated earlier, it is specifically denied that the applicant has made an appeal dated 27.4.1991 as alleged. I, therefore, submit that the applicant has not availed of the Departmental remedies available to him.

17. In reply to para-9 of the application I say that the reliefs claimed therein can not be granted and the application is required to be rejected.

18. In reply to para-10 of the application, I say that the interim relief prayed for by the applicant can not be granted.

Ahmedabad.
Dt. 10-7-1992.

प्रवर अधीक्षक डाकघर, भावनगर मंडल
Senior Superintendent of Post Offices
Bhavnagar Dn., Bhavnagar 364 001

Verification

I,

36

Verification

I, H.B. Chauhan
working as Sr. Supdt. of Pos Bhavnagar with the respondent No. 4
herein, do hereby verify and state that what is stated above is ture to my knowledge and information and I believe the same to be ture. I have not suppressed any material facts.

Verified at Ahmedabad on this 10th day of ~~June~~ July 1992.

Akil Kureshi
ACGSC

प्रवर अधीक्षक डाकघर, भावनगर मण्डल
Senior Superintendent of Post Offices
Bhavnagar Dn., Bhavnagar 364 001

Reply/~~Rejoinder/Written~~ ... filed by Mr. Akil Kureshi learned advocate for ~~petitioner~~ Respondent with second set.
Copy served/~~not served~~ & other side

Dt. 24/7/92

Dy.Registrar C.A.T. (J)
A'bad Bench

Annexure R 1

Annex R-I (6)

37

શ્રી, બહુમાન સંબંધમાં સંદર્ભ BNR
દીવા નં૧૧, ગૃહ-કી. સાવરકુંડલા સંબંધ નં.
S6 અને, મે. સાવરકુંડલા સ્ટુડીયોસ્ટેડ અને મોરિ
માલિકોએ કરારની શરતો મુજબ ફરજ
મુજબની બાંધકામ કરી મારે મુખ્ય શ્રી,
અને બા સંદર્ભ રજી. બહુમાન સંદર્ભ
ઘડાયે મારી મુદત ૬૬ વર્ષ સુધીની
નીતિ મારા મતાક્ષી. રાખેલી મુજબની
સંદર્ભ બાબતે સારી બરદિયા ઘડા અંગેર
માંથી છૂટા કરવા બોલિયા ~~બોલિયા~~ માં
મારા હાલ જે. ઘડાયે તરફે રાખવામાં
આવેલ. મને તે સમયે આસ્ટરસ્ટ
સ્ટુડીયોસ્ટેડ અને દિલ્હી સાવરકુંડલા તરફે
ની સાક્ષીમાં આપેલ ~~મારે બંધર~~ પત્ર
બા. શ્રી મારા મુદત તા. ૨૦.૧૨.૬૬ ના
સમય મુદત બાબતમાં આપેલ પત્ર
તેમજ દુકાન પત્ર બા. શ્રી મારે મુદત
તા. ૩-૧-૬૦ બાબતમાં આપેલ પત્ર
જે પણ તેમજ દુકાન નામ આગળ વિચારણાની
આ સાથે આજે સંબંધ પરત્વે માનુષાધિકારી
શ્રી. રસ્તા બા. સંદર્ભ ફ-૧૨.૧૮ ના રોજ.
ઘડાયે મારી મુદત તરફે નિયમ માં આવેલ
અને આજ સુધીમાં બાંધકામ કરેલ છે
(સાક્ષી) [illegible]

Attested

नायब अधिक्षक डाकघर भावनगर मंडल
Dy. Supdt. of Post Offices,
Bhavnagar Dn. BHAVNAGAR-364001

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કે આ રસીદ બા. રાઠોડ ને ~~[illegible]~~
તા. ૨૬-૪-૯૨ ના રોજ હુકમ કર
આ. ડી. આ. એડવાઈઝ ને દફતરે
તેઓ રજૂ કરી મળાંક લેવામાં આવ્યો
છે.

મારો પુત્ર આ. રસીદ બા. રાઠોડ
[illegible] ગ્રા. (૭) [illegible]
૬ર આપ્યો [illegible] ગામે આ
[illegible] ના ચોકઠા દસ્તાવેજ.
મારા [illegible] ગામે રહેતા હતા
[illegible] પણ મારા [illegible]
ગામે ~~આ~~ રહેતે [illegible] દસ્તાવેજ
[illegible] પુત્ર [illegible] ~~[illegible]~~ [illegible]
[illegible] [illegible] [illegible]
[illegible] ~~[illegible]~~ [illegible]
[illegible] ના ચોકઠા દસ્તાવેજ ના [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] પુત્ર
પુત્ર [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
ઉપર ના સાચો [illegible]

મુ: [illegible]
તા. ૪-૩-૯૨

Attested by

Dy. Supdt. of Post Offices,
Bhavnagar Dn. BHAVNAGAR-364001

પ્રતિ
જે.શ્રી. એ. એસ. પી. સાહેબ.
વિ સેવામાં મુ. સાબરકાંઠા
પેર-2 સલાડીયાજ
મુ. સાબરકાંઠા

રજુઆત (2)
ગામ. રમેશ. ભા. સોલંકી
C/o ભા. ઠાકર. સોલંકી
ઠે: મુળ ગામ રાજેન્દ્રપાર્ક
રાજેન્દ્ર રોડ સોખડા
તા- ૨૩-૧૧-૮૭

જણાવવાનું કે મારા પુત્ર અજય વિરુધ્ધ ગામ. રમેશ. ભા. સોલંકી
વિ સા-વિજય-અજય કે જે. સાહેબ પાસે મારા દ્વારા
બી. સેવંતાબેન ગુનાખોરીની ઇરાદે મોટા કુટુંબ ને ખોટી
ગેરસમજ ઉભી કરીને વડી રહેણાંક ના સાધુ ખુશાલ ના નામે
ના ખુટા વેચાણ કરી છે તેવે મેં સાહેબ તેમ જ અજયે
મને ઘરડાં એ મોટા કુટુંબ ના ઇતમ આધાર આપ
ઇચ્છાપૂર્વક સાહેબને વિનંતી કરેલ અને મેં સાહેબ દ્વારા
હું, વધ ધોરણ પાસ હું અને ડીપમાં છું, દરમાં
પોરકા માં અભ્યાસ ચાલુ છે અને આ સાથે મારા
જન્મ સાબરકાંઠા દાખલાની નકલ એમેક્ષમેન્ટ કાર્ડ
જે જરૂરીયાત વાળા મોકલ્યા છે અને હું ખાતાવું કામ પરાક્રમ
પૂર્વક કરીશ તેવી ખાત્રી આપી સાહેબ અને મેં સાહેબ
મારા દ્વારા જરૂરીયાત એ સોડર આપવા માટે ઇચ્છું
સાહેબને મારા સંતોષ પૂર્વક અરજ કરેલ જે
આપ સાહેબને રજુ આપું (પાલક)

/10

અમો [illegible] મોકલી આપવાને હું મારા હસ્તાક્ષર પર્યા
કરાવવે [illegible] કે મારા હસ્તાક્ષર [illegible] કરી આપે
તેમ પત્ર [illegible] તે સત્ય વિગત હુવા [illegible]

[illegible]

રશીદભાઈ બી. સૈયદ

Attested by

[illegible]

नायब अधीक्षक डाक घर भावनगर मंडल
Dy Suptdt of Post Offices,
Bhavnagar Dn. BHAVNAGAR-364001

Annexure 23

Annex-(iii)-III

A.T

66.

of 19 79-80. Register No. 4498

L. D. Muni High School

SIHOR

LEAVING CERTIFICATE

(Prescribed by Rule 21 of the Appendix II of the Grant in-aid Code)

1. Name of pupil in full	Sarvaiya Dhanji Premji.
2. Race and religion	Hindu- Mochi.
3. Place of birth	Mota surka.
4. Date, Month & Year, (in words) of birth according to the Christian Era	10-2-1948 Tenth February. Nineteen hundred fifty Eight.
5. Last School attended	Sihor Middle school.
6. Date of admission	22-6-'64
7. Progress	Fair.
8. Conduct	Good.
9. Date of Leaving the School	31-5-1969.
10. Standard in which studying and since when	Std. XI Eleventh Div. 'A' since June. 68.
11. Reason of leving the School	To go Else where.
12. Remarks	Failed in the old S.S.C. Exam of March. 1969.

Certified that the above information is in accordance with the school register.

Date 23-6-1974.

M.N.M.

XI A. Class Master

Librarian

Clerk

HEAD MASTER,
L. D. MUNI HIGH SCHOOL
SIHOR (MAHARASHTRA)

Head Master
L. D. Muni High School : Sihor

Medical Officer,

Medical Officer,
Community Health Centre,
SIHOR Dist. Bhavnagar.

Attested

नायब अधिक्षक डाकघर भावनगर मंडल
By Supdt of Post Offices.
Bhavnagar Dn BHAVNAGAR-364001

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Recd copy
Advt Counsel
24/8/92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH.

Original Application No. 92 of 1992.

Rafik Bachubhai Saiyed ... Applicant.

V/s.

Union of India and others. ... Respondents.

AFFIDAVIT-IN-RE-JOINDER.

I, Rafik Bachubhai Saiyed, EX. EDDA/CA Mota Surka B.O. H/Q. Sihor, Adult, the applicant in the above said O.A., do hereby state on solemn affirmation as under :-

2) That the Respondents have filed a reply and a copy of the said reply is served to me.

3) I have read the said reply. The contents of the reply which are not specifically admitted in the rejoinder affidavit are not true and hence not admitted.

4) With reference to para-2 it is denied that the application is misconceived and untenable.

Copy served to the Govt. Standing Counsel on 24-8-92 His signature obtained above

522/3117

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It is submitted that the application is in detail and discloses necessary and material circumstances and facts.

5) With reference to para-4. It is not true that the applicant was appointed on provisional and ad-hoc basis.

The applicant was appointed on temporary basis onquite vacant post as per departmental Rules and Regulations and he worked on quite vacant post w.e.f. 6-12-89 to 26-4-91 i.e. for 507 days i.e. one year 3 months and 21 days contineously without any break.

The applicant states and submits that all appointment orders are issued temporary and the required conditions is put up in the appointment orders but the appointing authorities cannot use it arbitrary and with malafide intention.

The applicant states and submits that as per orders from the P.M.G. Ahmedabad under No.VIG-11/88-89/Sep.88 dated 5-10-88 (Annexture X page).

Column .4 :- Reads as under.

In cases of the resignation of the incumbents, advance action should be taken to fill up the post before the resignation is accepted. Resignation should not be accepted unless and until formalities are completed to fill up the post. (Annexture X page).

The applicant submits that the pre-appointment formalities were completed and there and there after the applicant was appointed on quite vacant post due to acceptance of resignation as per instructions from the P.M.G. as above.

The applicant states and submits that the Chief Postmaster-General, Ahmedabad had introduced a monthly statement vide his letter No.Staff/24-19/ Rlg/Corr dated 16-6-89 that the appointing authority will submit a monthly statement to its higher authority i.e. the Supdt. of Post offices who will submit a monthly statement to the D.P.S. on 10th of the following month and the D.P.S. will scrutinise the statement received by them and will take necessary action to regularise pending appointment cases (Annexture X-1).

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The A.S.P. Bhavnagar West Dn. had not shown this case of EDA Mota ~~Surkax~~ Surka as pending in the monthly statement as pre-appointment formalities were already completed before accepting the resignation and the applicantwas regularly appointed on quite vacant post and as such this was not the pending case hence the A.S.P. Bv. Dn. West had not shown this case as pending in the monthly statement.

The applicant states and submits that Shri H.P.Sarvaiya A.S.P. Bv. S/Dn with malafide intention to appoint his own brother had illegally terminated the services of the applicant and appointed his own brother Shri D.P, Sarvaiya on provisional basis (Annexture A-3 page 19).

The applicant states and submits that What were the circumstances to appoint Shri D.P.Sarvaiya a brother of appointing authority to appoint him provisionally when the applicant was working on the post since 6-12-89.

The applicant submits that this clears

the malafide intention of Shri H.P.Sarvaiya A.S.P. BV S/Dn and appointing authority.

6) With reference to para-5 the applicant states and submits the applicant has specifically mentioned in 3(B) as under :-

" The applicant submits that his services are terminated vide orders No.PF/EDA/Mota Surka dated 23-4-91 without any fault of the applicant, without showing him any reason, without asking any explanation of the applicant, without initiating any action as per departmental rules and regulations, without taking any action as per provisions of section 25F of I.D.Act, with total malafide action of Shri H.P. Sarvaiya to accommodate his own brother Shri D.P. Sarvaiya who does not fulfill the required qualification for the appointment".

The applicant here specifically stated that the action of the respondent authority is arbitrary, with total malafide intention, misused his own power for the benefit ofhis own brother, against the principle of natural justice violative of article 311(2) of the

4)

Constitution of India Violative of Article 14 and 16 of the Constitution of India.

It is nott rue that the applicants appointment was purely provisional and of ad-hoc nature.

The Govt.has issued specific orders that resignation can only be accepted after the action are taken to fill up the post and any vacant post must be shown in the monthly statement a s discussed in para-5 above in detail.

Thus Shri H.P. Sarvaiya the appointing authority has violated Govt. own instruction which is illegal and bad in law.

It is not true that the applicant has not preferred an appeal to the S.S.P.Bv.Dn.Bhavnagar. The applicant states and submits that he had submitted appeals to the S.S.P. Bv.Dn. under certificate of posting dated 27-4-91 and 1-5-91. Xerox copies of the U.P.C. are attached at Annexture X-3. This shows that the appellate authority had indirectly confirmed the action of Shri H.P. Sarvaiya his own A.S.P. to

appoint his own brother Shri D.P.Saravaiya and thus all the authorities have misused their power.

The applicant states and submits that he had also taken this issue through his union and Secy. of his Union had taken up the case with S.S.P. Bhavnagar on 29-4-91 (Annexture A-9 Page 27-28). The Union had taken up this issue with S.S.P. Bv. off. and on and also with the P.M.G. Rajkot.

The SSP had given reply to the union in the monthly meeting at Annexture A-6 page-23 SL No.12 as under.

Item 12:- Removal of Shri R.B.Saiyed EDA Mota Surka (Sihor) by A.S.P.BV West S/Dn.

-Denovoprocedure is already ordered.

The applicant states and submits that the appointment of Shri D.P.Sarvaiya was not issued after following the required procedure hence the S.S.P. had ordered " Denovo Procedure". This clearly shows that the order issued at Annexture A-3 page 19 was quite illegal and bad-in law.

The applicant states and submits that there

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is no need to join Shri D.P. Sarvaiya as a party - respondent because the termination Order of the applicant are illegal, bad-in law and therefore it is not the case to join him as a party-Respondent.

The applicant was appointed regularly under written orders and his services are terminated without initiating any action, the action of the respondent authority terminating the services of the applicant is ~~xhl~~ challanged as bad-in-law hence there is no need to join Shri D.P. Sarvaiya as a party-respondent. the applicant will join him as a party-respondent. It is not necessary to join him as a party respondent as per law.

7) With reference to para-6, the applicant states and submits that the Honourable Tribunal have considered this aspect and there and then the application was admitted . It would be an insult of the Hon'ble Tribunal to put such baseless argument on affidavit. It would have been better if this para would have been omitted.

8) With reference to para-7 . It is admitted by the respondent that the post of EDDA Mota Surka fall vacant due to voluntary retirement and the applicant was appointed onpurely vacant post w.e.f. 6-12-1989.

9) With reference to para-8. It is not true that the applicant was appointed provisionally. But the applicant was appointed after allpre-appointment formalities completed and his appointment orders are issued on temporary basis in a routine fashion under terms and conditions that does not mean that the respondent authority can use his arbitrary powers. If it is used it is against the principles of natural justice and arbitrary orders are bad-in-law and requires to be quashed and set aside.

The applicant submits that the respondent has not denied that Shri D.P.Sarvaiya is the brother of Shri H.P.Sarvaiya A.S.P. BV S/Dn the appointing aut ority who misused his official power.

The applicant states and submits that it is not necessary and not in the instant case for

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for the applicant to reside at Mota Surka because the H/Q of the applicant is Sihor and hence as per Rules and regulation of the Department he should remain present at his H/Q from which his duty starts. It is not true that the applicant was notresiding at Sihor.

The applicant submits that as per service condition, the EDA must have other source of income and as such he was serving ina Hotel at Sihor a certificate regarding serving in a hotel is enclosed herewith.

The applicant states and submits that he had maintained his room on rented basis and a rent receipt is also attached herewith showing that he is residing at Sihore.

The applicant states and submits now it is clear that the respondent authority has terminated the services of the applicant presuming that he is notresiding at village Mota Surka or at Sihore at his H/Q.

The applicant states and submits that

the termination of the services of the applicant without showing him show cause notice initiating any departmental action without asking any explanation is illegal, violation of principles of natural justice, violation of Article 311(2) of the Constitution of India and therefore bad-in-law.

The applicant states and submits that the S.S.P. Br. Dn. who is the appellate authority with malafide intention under threat obtained a written statement from Shri R.B.Saiyed on 4-3-92 while the applicant filed this applicationbefore the Honourable Tribunal on 20-2-92. This clearly shows the malafide intention of the S.S.P. the appellate authority who plainly refused that the appeals of the applicant are not received though sent under certificate of posting. This shows the malafide intention to confirm the action of his own A.S.P. Shri H.P. Sarvaiya and allow him to appoint his own brother.

The applicant states and submits that it is not true that the applicant is not eligible to hold the post of EDDA/CA Mota Surkha, Education qualification

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of EDCA/DA are clearly shown at page 57 of EDA (C & S) Rules 1965 under Section III.

The applicant states and submits that the respondents have admitted that on account of certain lacuna in the procedure of ~~xxx~~ recruitment de-novo procedure for recruitment is ordered vide orders dated 18-11-91.

This clearly shows that orders at Annexture A-3, page 19 is illegal and bad in law.

10) With reference to para-10 the applicant states and submits that the appointment ~~f~~ of the applicant was already regularised and preappointment papers were prepared and therefore he was continued in service for more than one year 3 months etc. The applicant was possessing employment card when he was appointed and on the strength of this employment card he was regularised while Shri D.P. Sarvaiya was not possessing employment card on 23-4-91 when he was provisionally appointed.

" With reference to para-11 the applicant states and submits that the then A.S.P. Shri N.R.

Trivedi had prepared all pre-appointment papers, the applicant was asked to furnish usual security bond andhis appointment was regularised and hence he had not shown the post as vacant in themonthly statement till the termination of the services of the applicant by Shri H.P. Sarvaiya.

12) With reference to para-12.The applicant states and submits that the Honourable Supreme Court and various High Courts and various Tribunals have specifically given judgements and even this Hon'ble Tribunal has given judgements that those who have completed one year continuously service in the department, their services are required to be regularised.

This Hon'ble Tribunal has protected the rights of even outsiders in OA/44/90 and in many other cases though the outsiders are not appointed or ordered to work by appropriate authority, they are not possessing requisite qualifications regarding

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education, age etc. their names arenot registered in Employment exchange, their names are not sponsored by employment exchange even though their rights are protected by this Hon'ble Tribunal on the ground that they were working on the vacant posts formore than one year.

While in the instant case the applicant was appointed by the appropriate appointing authority and is in possession all required qualification for the appointment as EDA.His services were already regularised on quite vacant post and continued for more than one year 3 months and 21 days i.e. 507 days continuously before terminating his services.

13) With reference to para 13 & 14 & 15. It is already discussed in above paras and correctly shown in O.A.

14) With reference to para-16. All departmental remedies were exhausted and this shows that the appellate authority has also acted with malafide intention to confirm the action of his A.S.P. Annexture A-4, A-5, A-6, A-7, A-8 , A-9.

VERIFICATION

I, Rafik Saiyed s/o. Bachubhai Saiyed Ex. EDDA/CA Mota Surka H/Q Sihor age adult, resident of Sinor, do hereby verify that the contents of this application are true to my personal knowledge and belief. I have not suppressed any material facts.

Ahmedabad,

Date. 27-8-92

(R.B.Saiyed)
Signature of applicant.

Identifiedby me;

(K.C.Bhatt)
Advocate.

~~Reply~~/Regoinder/~~written submission~~
filed by Mr. K. C. Bhatt.....
learned advocate for petitioner/
~~Respondent~~ with second set.
Copy served/~~not served~~ to other side

27/8/92 By Registrar C.A.T (I)
A'bad Bench

(Annexture X-2)

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Copy of letter no. VIG-11/88-89/Supt.88 dated 5.10.88 from the P.M.G. Gujarat Circle, Ahmedabad to All S.S.P.Os in Guj. Circle etc. etc.

-.-.-.-

Sub :- Appointment of E. D. Agents.

....

During the course of scrutiny of cases of appointments of E.D.As in one Division a number of irregularities were noticed. The following instructions are issued for strict compliance :----

1) According to Directorate's instructions contained in letter no.41-286/87-PE-II dated 14.12.87, circulated under this office endorsement no.Staff/24-19/Rlg/VI dated 23.12.87, even for making provisional appointments to the post of E.DA, nominees from the Employment Exchange are to be called for.

2) The Employment Exchange should be addressed by Registered AD The A D card should always be kept in the concerned file. If A D is not received back an attested copy of Addressee's receipt should be obtained from the Office of Delivery and kept on record without fail.

3) It is noticed that vacancies are notified to the Employment Exchange and to the local authorities simultaneously in large number of cases. This is against the instructions of the Department. The local notification should be issued after a period of 30 days from the date of issue of notification to the Employment Exchange. The local notification should be given wide publicity by endorsing copies to all the important local authorities viz. Sarpanch, Schools, Hospitals, Police Stations, Post Offices, Co-operative Societies etc. These copies should be sent by Registered A.D. and the A.D. card or attested copies of addressee's receipts should be kept on record.

4) In cases of the resignation of the incumbents, advance action should be taken to fill up the post before the resignation is accepted. Resignation should not be accepted unless and until the formalities are complete to fill up the posts.

5) In cases of termination of services of the E.D.As on attaining the age of 65 years advance action should be taken to select the successor so that E.D.A. could be relieved on the due date by a regular incumbent. Stop-gap arrangements made to fill up such vacancies will be viewed very seriously.

6) A few cases of retention of E.D.As beyond the age of 65 years have come to light. This is because no proper watch is kept by the appointing authorities. Disciplinary action will be taken against those responsible for such irregular retention of E.D.As.

7) Appointment orders of E.D.As, whether provisional or regular, should be issued in the proforma prescribed. Two separate proforma have been prescribed by the Directorate vide letter no. 43-4/77-PEN, dated 23.2.1979. One for provisional and the other for regular appointments.

.... 2/-

(25) 58

8) Regular appointment order should be issued only after the character and antecedents of the candidate have been verified through District Magistrates. The procedure prescribed in the D.G's letter no.43/36-Pen. dated 17.10.88 should be strictly followed.

9) The dependents of E.D.As who die in Service are eligible for appointment on compassionate grounds in relaxation of normal recruitment rules vide D.G's letter no. 43/212/79/Pen. dated 4.8.80. The authority competent to make such appointment is the Head of the Circle and not the head of the division. Deserving cases should be referred to the Head of the Circle for consideration.

=0=0=0=0=0=0=0=

Endst. No. B-1/9/88 dated at Ahmedabad the, 19.12.1988.

Copy forwarded for information, guidance & n/action to :-

1) The A.S.P.Os North/South/West sub-dn. Ahmedabad.
2) The Senior P.M. Navrangpura H.O., Ahmedabad - 380 009.
3) O.A. 'C' Br. Dnl.office, for his file no.B-2/27/EDA/88.
4) The S.S.P.Os (Personal) Ahd. City Dn., Ahmedabad-380 001.
5) All O.As/Group oficers Dnl.office, Ahd.City Dn.,Ahd-380001

All A.S.P.Os should follow the above instructons rigidly & acknowledge the receipt.

Senior Supdt. of Post Offices
Ahd.City Dn.,Ahmedabad-380 001.

TRUE COPY

K. C. BHATT
B.A. LL.B, ADVOCATE

My Dear

(Annexure X.3)

Copy of letter no.41-462/87-PE.II dated 14.12.87 from D.G. P&T New Delhi and addressed to all heads of circles.

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Sub : Service conditions of EDAs-policy to ride bicycle essential for out-door duty.

Sir,

In pursuance of the Madan Kishore Committee report on ED system, orders were issued vide DG P&T letter no.1-2/72-EDC dated 1[illegible].8.73 that ability to ride bicycle should be a pre-requisite for EDAs to be engaged on out door duties viz. EDDAs/EDMCs, ED Messengers, etc. in areas where bicycle can be used. The matter was also considered by the committee on Enquiry on ED system(Savoor Committee) which has submited its report in 1986. The committee has also recommended that all appointments to ED posts attached without door duties should have knowledge of cycling. It should be ensured that the persons engaged to ED posts without-door duties in areas where cycle can be used should have knowledge of cycling as as pre-requisite condition.

Hindi version will follow.

Yours faithfully,
sd/-(K Ranga Rao)
Asstt.Director General(Trg)

.....

Copy of D.O. letter no.41-467/87.PE.II dated 14.12.87 from P.S. Ragavachari, Secretary, O/O DG P&T New Delhi and addressed to Shri D[illegible] Sakalkale, PMG Gujarat circle, Ahmedabad-380009.

My Dear Sakalkale,

Of late quite a few complaints are being received regarding malpractices in the appointments of ED staff in the rural aras, especially ED Branch Postmaster. A parliament question on the subject has also been tabled recetly.

Complaints received by the Regional Directors or by you in this regard should be looked into carefully. If the apointing authority is found to have made a mistake, he should be taken to task. If there are allegations of corupt practices in making such appointments, these should be carefully looked into and suitable action taken. Cases of corupt practices in making such appointment should be reported to Directorate indicating what action you are taking within your own powers or what action you would recommend to Directorate, in respect of Gazetted officers.

cont../2/

(27) 60

3. Your attention is invited to question no.21 (C) in the latest Inspection Questionnaire for inspection of Division offices. This relates to the scrutiny of 10% of appointments of EDBPMs and EDSPMs by the inspecting officers. There is a similar question to be attended to in the inspections of sub-Divisional offices by the Divisional Superintendents. You may please ensure that this check of appointments of ED staff in the Divisional and sub divisional offices is meticulously carried out. The inspecting officer should bring to the notice of the next higher authority any serious irregularities noticed during this scrutiny. The inspecting officers should also ensure urgent remedial action in respect of any irregularities within their own powers.

4. You may please direct your Director(Vig.)/Vigilance Officer to carry out special checks in Divisional or Sub divisional units where frequent complaints arise. In one circle a special procedure was adopted by the PMG to insist upon ratification of ED appointments by the authority next higher to the appointing authority because of frequent irregularities. You may consider such step in your circle in respect of units from where frequent complaints of a serious nature arise.

5. An acknowledgement may please be sent to Shri R S Natrajmurti, Director(Estt.)

With best wishes,

Yours sincerely,
sd/-
(P Ragavachari)

TRUE COPY

K. C. BHATT
B.A. LL.B. ADVOCATE

Annexture X-4

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Copy of letter no.Staff/24-19/Rlg/corr dt. at Ahd-9, the 16-6-89 received from the Chief IMG Guj.circle, Ahd-9 addressed to all SSIOs &....

Sub : Provisional appointments- case of ED staff.

...

In certain circumstances, the provisional appointment in ED staff is necessary and the competent authorities are accordingly making provisional appointment. However, it is noticed that there are cases where the provisional appointments are continued for a indefinate period without making any effort for their regularisation. This creates problem in future.

To keep a watch over the provisional appointments made by the appointing authorities and to take action for regularisation for provisional appointment, it is felt necessary to introduce a monthly statement in the proforma enclosed. All the units will therefore, will obtain the information from Recruiting Units & send the statement in the prescribed proforma to concerned DPS on 10th of the following month. The DPS will please scrutinise the statements received by them and will take necessary action to regularise pending appointment cases.

sd/-
For Chief Postmaster General,
Gujarat circle, Ahmedabad-9.

Endst.no: B1/9/EDA/89-90 dt. at Ahd-1, the 27-6-89.
Copy forwarded for information & n/a to:-

1. All ASIO's Ahd.city dn., Ahd. & Sr. P.M. N'pura H.O

They will please send statement in the prescribed proforma to this office by return of post & thereafter 5th of the following months.

2. All Group officers, D/O AM.
3. The Sr. PM, N'pura HO, Ahd-9.
4. CA 'C' Br. D/O.

For Sr. Supdt. of post offices,
Ahd.city dn., Ahmedabad-380001.

TRUE COPY

K. C. BHATT
B.A. LL.B. ADVOCATE

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P R O F O R M A

1. Name of the official appointed on adhoc basis.

2. Designation & place where appointed.

3. Date from which the official shown in col.1 is appointed.

4. Reasons for which the post shown in col.2 fall vacant.

5. Detailed justification for making adhoc appointments.

6. Date on which the action is taken for making regular appointments.

7. Detailed justification for continuing adhoc appointments if the appointment is more than 4 months.

8. Remarks, if any :

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ભાડા પાવતી પત્રક નકલ

[illegible]

[illegible] ભાડા પાવતી બુક માંથી. [illegible]

[illegible] રીત મુજબ અમે પાવતી આપી છે

ભાડા ઘરધણી ભાડા તા. ૧૪-૩-૯૧ સુધી ચૂકવી દીધા છે

તા. 3-3-૧૯૯૧.

સિહોર

Rent Receipt

Owner - Mehbubbhai Alibhai Near Lilapir Dargah Tana Rd.

Recd Rs 125/- from Rafiq Bachubhai Saiyed as Rent for the month of Feb-91.

Date 3-3-91

Sihor

Sd

(Mahubur A. Malik)

Certificate

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સર્ટીફીકેટ

આથી દર્શાવવા આવે છે કે શ્રી રફીક બચુભાઈ સૈયદ અમારા ત્યાં કામ કરે છે અને તેઓને દરરોજ પગાર ચુકવવામાં આવે છે તથા બે વખત ચા અને એક ટાઈમ નાસ્તો આપવા માં આવે છે અને તેઓ આ કામ માટે તા. ૨૨-૮-૮૯ થી કામ કરે છે

True Copy
[illegible]
Advocate

મુકેશ જયંતીલાલ સોની

સિહોર

This is to certify that Shri Rafiq Bachubhai Saiyed is working at our Hotel. He is paid daily wages. and Two times tea and one time breakfast. He is working since August 1989

(Sd) (Mukesh Jayantilal Mantar Sihor)

Certificate.

This is certify that Shri Rafiq Bachubhai Saiyed has rented our room from August 1969 and the rent is Rs 125/- P.M. light Bill according to share

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સહી. (Sd) (Mehbub A. Malek)

આથી સર્ટિફિકેટ આપવામાં આવે છે કે શ્રી રફીક બચુભાઈ સૈયદ અમારા મકાનમાં ભાડે રહેતા હતા. તેમ જ તેઓ અમારી ઓરડી ભાડાની રૂપિયા રૂ. ૧૨૫/- લાઈટ બીલ સાથે દર મહિને અમારાં ખાતે રૂપિયા ન આપે છે

સહી
મહેબુબ એ. મલેક

64A

ભાડાની પાવતી નંબર ૨૦૨૨

ભાડાની પાવતીનું નામ સરનામું, } મહેબુબ અબીબભાઈ મલેક
ઠે: લીલાપીર દર્ગા રોડ પાસે
તાના રોડ

શ્રી રફીક બચુભાઈ સાથે મકાનની ભાડે આપુની અને રૂપિયા ભાડાના રૂ. ૧૨૫/- અંકે એકસો પચીસ પૂરા આપવાને

તા. ૫-૨-૯૧.

સહી

Rent Receipt

Owner:- Mahebub Abibhai Malek, near Lilapir Dargah Tana Rd.

True copy
Attested
A

Recd Rs 125/- rent for the month of Jan 1991

Date
5-2-91
Sihor

Sd.
(Mehbub A. Malek)

C/PC

20.4.91

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પોસ્ટ ઓફિસ ભાવનગર મુખ્ય અને પોસ્ટ ઓફિસ

સિહોર

સિહોર

under certificate of Posting

Sr. Supdt. of Post offices

Bhavnagar Div Bhavnagar

નકલ

સ્ટાફ ઓ. ઓફિસ

એ.એ. સિહોર

3. U.P.C. under certificate of Posting

Sr. Supdt. of Post offices

ભાવનગર મુખ્ય. અને પોસ્ટ ઓફિસ

ભાવનગર વિભાગ

Bhavnagar ભાવનગર

તા. સિહોર - ભાવનગર.

નકલ

સ્ટાફ ઓ. ઓફિસ

એ.એ. સિહોર

સિહોર.

1-5-91

True copy

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BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH AT AHMEDABAD

ORIGINAL APPLICATION NO.92 OF 1992

R.B. Saiyed ... Applicant

V/s.

Union of India and Ors. ... Respondents

D. No 4076/92
R.S.M

Respondents' Reply to the
Rejoinder filed by applicant

I, H. B. Chauhan working as S.S. Pos. Bhavnagar with the respondent No. 4 herein, do hereby state in reply to the rejoinder filed by the applicant in the above matter as under:

Recd copy
16-12-92

1. I have perused the relevant papers and files pertaining to the above matter and I am conversant with the facts of the case and I am authorised to file this reply to the rejoinder, on behalf of the respondents.

From:
Mr. Akil Kureshi
Advt.

2. I say that no part of the rejoinder shall be deemed to have been admitted by the respondents unless specifically stated so hereinafter. All the statements, averments and allegations contained in the rejoinder shall be deemed to have been denied by the respondents unless specifically admitted by me hereinafter. I reiterate what is

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stated in the reply filed by the respondents earlier.

3. In reply to para-4 of the rejoinder I say that the application is misconceived, untenable and requires to be rejected.

4. In reply to para-5 of the rejoinder, I say that the P.M.G. Ahmedabad's orders cited by the applicant in Annexure-I are applicable in cases of resignations of the incumbent. In this case the incumbent had not tendered resignations but he requested for voluntary retirement from service producing medical certificate issued by the competent medical authority that he was incapacitate to discharge the duties of E.D.Agent. In such circumstances it was not possible to make regular appointment to the said post. The regular incumbant was therefore immediately relieved making provisional appointment of the applicant on the post with clear condition that the provisional appointment will be terminated when regular appointment is made and that he shall have no claim for appointment to any post. This is as per DG P&T letter No.43-4/77.Pen. dated 18.5.1979 (copy of extract at Annexure-R-I hereto). I say that the argument regarding monthly statement of vacancies is internal matter and it has no relevance with the present case. I say that the contention

of the applicant regarding mala fide intention on the part of the ASP Sub Division in the matter of termination of services of the applicant, is absolutely baseless. It is true that provisional appointment of Shri D.P. Sarvaiya, brother of ASPOs Sub Dn. is also not according to the Rules of Recruitment of E.D.Agents. But at the same time the applicant is also not eligible to get regular appointment on the post as he is resident of Songadh i.e. other than Head Quarters of the E.D. Agent and Post Office Village. Therefore, the 'DENOVO' procedure has been ordered for appointment on the post from candidates of Head Quarters of the E.D. Agent or of Base B.O. Village. The regular appointment will be made as soon as 'DE NOVO' procedure is over.

5. In reply to para-6 of the rejoinder, I say that as stated in the earlier reply, the applicant was provisionally appointed with clear understanding that the provisional appointment would be terminated when regular appointment is made and that he should have no claim for appointment to any post. Under the circumstances question of giving reasons for termination ~~is~~ does not arise. I further say and submit that it was not required to follow the procedure prescribed

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under Section 25 of the Industrial Disputes Act. I deny that respondents have acted arbitrarily and misused the power with mala fide intention and committed breach of principle of natural justice violating the provisions of Article 311(2) of the Constitution of India. It is true that the appointment was purely provisional and ad hoc. I further say and submit that this is not a case of resignation but invalid retirement in which incumbant is to be relieved immediately making provisional arrangement. I say that the Govt. orders cited by the applicant are therefore, not applicable to the present case. It is true that the applicant had not preferred an appeal to SSPOs, Bhavnagsr. I say that the xerox copies of the U.P.C. dated 27.4.1991 and 1.5.1991 are created ones and it is a clear after-thought. I say that the applicant had not produced evidence of receipt of appeal to the competent authority i.e. SSPOs, Bhavnagar. It is submitted that the father of the applicant is working as Group 'D' official at Sihor S.O. and as such it is quite possible that he can misuse the office stamp to create illegal evidence. It is true that the National Union had taken up the issue with the SSPOs, Bhavnagar and after inquiry, discussion was taken place and the Union

was replied to accordingly. However, it has no relation with the applicant's appeal which is not made to the SSPOs, Bhavnagar. It is not true that the applicant was appointed regularly under written order, but the appointment was provisional until regular arrangement is made. Under the circumstances the action of the respondents terminating the services of the applicant is quite in order.

6. In reply to paras-7 and 8 of the rejoinder, I say that the contents of the same are incorrect and I deny the same. It is true that the post of EDDA Mota Surka fell vacant due to invalid retirement but it is not true that the applicant was appointed on purely vacant post with effect from 6.12.1989. The applicant was provisionally appointed untill regular arrangement is made.

7. In reply to para-9 of the rejoinder, I say that it is true that the applicant was appointed provisionally and no pre-appointment formalities were completed before provisional appointment of the applicant. However, after completing the formalities said Shri Sarvaiya was selected and therefore, there is no question of exercising arbitrary powers. It is true that appointing authority had appointed his brother after observing the formalities with somedefects.

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However, it is not correct to say that Shri H.P. Sarvaiya had misused his official powers in terminating the services of the applicant herein. It is also true that the applicant is not residing at Sihor and therefore, he is not fulfilling the residence conditional. Moreover, Shri D.P. Sarvaiya also is not a resident of Sihor. Hence, the SSPOs Bhavnagar had ordered for 'DENOVO' procedure for misuse of powers in selecting his brother though not eligible. It is not true that the applicant is residing at Sihor and he had maintained his room on rent basis. This is the created and after-though action on the part of the applicant. I say that the applicant's father had stated before the SSPOs, Bhavnagar, in his written statement that the applicant is residing at Songadh, 7 KMs. away from Sihor even when he was working on the post of EDDA/CA Mota Surka. It is true that the applicant was relieved after observing formalities of selection of new candidate. Hence the question of issuing show-cause notice or taking departmental action does not arise as the applicant was not regularly appointed. Under the circumstances it is not correct to say that the action of the respondent is illegal or in violation of the principle of natural justice or in violation of Article 311(2) of the Constitution of India. It is also incorrect to

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suggest that the statement of the applicant was obtained with mala fide intention under threat on 4.3.1992. It can be proved from his application dated 23.11.1989 addressed to ASPOs West Sub Dn. Bhavnagar that he is residing at Songadh. Even the applicant's father is also residing at Songadh. It is denied that the appeal of the applicant is received by the SSPOs.

8. In reply to paras-10 and 11 of the rejoinder, I say that the contents of the same are incorrect and I deny the same. I deny that the appointment of the applicant is regularised and the pre-appointment papers were prepared.

9. In reply to para-12 of the rejoinder, I say and submit that the applicant had not furnished any case laws. More over, it might have applicability to the casual labourers and not outsiders. At any rate, it is not applicable in the present case. It is true that this Hon'ble Tribunal has protected the right of outsider against vacant departmental posts which are governed by the provisions of C.C.S. (CCA) Rules, 1964 in Original Application No.44 of 1990, but this is not the post of said category. It is not correct to state that the applicant is possessing all required qualifications for the appointment of EDDA/CA Mota Surka B.O. as he is not a resident of Head Quarters or even of a B.O. Village. I say that the said condition is a fundamental

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condition. Merely by producing a rent receipt it cannot be established that the applicant is residing at Sihor.

10. In reply to para-13 and para-14 of the rejoinder, I say that the contents of the same are incorrect and I deny the same. It is not correct to state that the applicant had exhausted all the Departmental remedies. I say that the applicant had failed to produce the proof of receipt of the appeal made to the SSPOs, Bhavnagar.

11. In view of what has been stated above and what has been stated in the earlier reply filed on behalf of the respondents, I say and submit that the original application is misconceived, untenable and applicant is not entitled to get any relief claimed in the application and the application be dismissed forthwith.

Ahmedabad,

Dt. 4-12-1992.

वरिष्ठ अधीक्षक डाकघर, भावनगर मंडल
Senior Superintendent of Post Offices
Bhavnagar Dn., Bhavnagar 364 001
Telephone No.

Verification

I, H. B. Chauhan

working as SSPos Bhavnagar with respondent No. 4 herein, do hereby verify and state that what is stated above is true to my knowledge, information and belief and I believe the same to be true. I have not suppressed any material facts.

Ahmedbad,
Dt. 4-12-1992.

वरिष्ठ अधीक्षक डाकघर, भावनगर मंडल
Senior Superintendent of Post Offices
Bhavnagar Dn., Bhavnagar 364 001
Telephone No.

Reply/Rejoinder/written submissions filed by Mr. Anil Suresh V. learned advocate for petitioner/Respondent with second set.
Copy served/not served to other side

Dt. 17/12/92 By Registrar C.A.T. (J)
A'bad Bench

Annex-R1

:: DEPARTMENT OF POSTS INDIA ::

An Extract of Rule-5 (ii) of "Method of Recruitment " Section-II of P & T Extra Departmental Agents (Conduct and Services) Rules - 1964.

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5. **RESIDENCE :-**

(ii) ED Mail carrier, Runners and Mail Peons should reside in the station of the Main Post Office or stage where from mails originate/terminate, i.e. they should be permanent residents of the delivery jurisdiction of the Post Office.

x x x x
x x
x

Attested by

30-3

[illegible]
Dy. Supdt. of [illegible] Offices,
Bhavnagar Dn. Bhavnagar-364 001

:: DEPARTMENT OF POSTS INDIA ::

An Extract of Rule-5 (ii) of "Method of Recruitment Section-II of the Extra Departmental Agents (Conduct and Services) Rules - 1964.

0=0=0=

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH.

Original Application No. 92 of 1992.

Rafik Bachubhai Saiyed ... Applicant.

v/s.

Union of India and others. ... Respondents.

D. No. 145/93

Rec. Advocate 18/1/93

Copy delivered to Sh. Gaur on 18/1/93

Applicant's further Rejoinder to the Reply to the Rejoinder filed by the Respondents.

I, Rafik Bachubhai Saiyed Ex. EDDA/CA Mota Surka B.O. H/Q Sihor, Adult, the applicant in the said O.A., do hereby state on solemn affirmation as under :-

2) That the Respondents have filed a further reply to the rejoinder filed by the applicant and a copy of the same is served to the applicant.

3) I have read the said reply. The contents of the reply which are not specifically admitted in the rejoinder affidavit are not true and hence not admitted.

210 Pers KCB

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4) With reference to para-3, it is denied that the application is misconceived and untenable.

It is submitted that the application is in detail and discloses necessary and material circumstances and facts.

5) With reference to para-4, it is categorically admitted by the respondent that the post of E.D.Agent was fallen vacant due to the incumbent produced medical certificate incapacitate to discharge the duties and was relieved vide A.S.P.No.B2/7/Mota Surka dated 2-12-89.

(Annexture A-1 page 14) and the applicant was appointed temporary as per condition shown in the said letter (Annexture A-1 p.14). It is thus admitted that the post of E.D.Agent was vacant and the applicant was appointed on the vacant post w.e.f. 6-12-1989.

It is also admitted as under " I say that the argument regarding monthly statement of vacancies is

internal matter and it has no relevance with the present case".

It is admitted that the orders at page No.57, to 62. Annexturew to the rejoinders were issued by the department to curb malpractices in appointments of E.D. Staff and specifically to curb corrupt practices, the Department has issued and introduced a specific monthly statement so that the S.P. and D.P.S. can control over the corrupt and malpractices by the appointing authorities in appointment of E.D.Agents.

Inspite of such specific orders and introduces monthly statement for the specific purpose but the Department has failed because the appointing authority do not furnish the correct particulars in the statement for vacant post and thereby it is necessary for the Tribunal to bringout such offices so that no body can dare to misuse their power. Thus there is relevancy of the monthly statement in this present case.

The respondents have categorically admitted as under :-

" It is true that provisional appointment of Shri D.P. Sarvaya, brother of A.S.POs Sub Dn. is also not according to the Rules of Recruitment of E.D.Agents".

The applicant submits that the termination order Annexture A-3 page 19 were quite illegal, arbitrary and bad-in-law as specifically admitted by the Respondent authority as under :-

i) the appt. of Shri D.P.Sarvaiya was provisional.

When one arrangement was already continued w.e.f. 6-12-89 to 26-4-91 more than 50% 507 days one year, three months and 21 days on quite vacant post.

(ii) It is admitted that A.S.P. Sub Dn. the appointing authority has appointed his own brother.

This is the misuse of power and that too by illegal termination of services of another person.

(iii) The appointment was also not according to the rules of Recruitment of E.D.Agents.

The Respondent authority has categorically admitted that the appointment of Shri D.P.Sarvaiya brother of the appointing authority was not according to Rules.

Thus Annexture A-3 page 19 A.S.PO's No.PF/EDA/Mota Surka dt. 23-4-91 is illegal and bad-in-law and therefore it requires to be quashed and set aside.

6) The applicant states and submits that the respondents have categorically admitted as under.

i) With reference to para 5."It is true that the National Union has taken up the issue with the S.S.P.Os, Bhavnagar and after inquiry, discussion was taken place and the Union was replied to accordingly".

ii) With reference to para-6. " It is true that the post of E.D.D.A. Mota Surka fall vacant due to invalid retirement".

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iii) With reference to para-7. " It is true that appointing authority had appointed his brother after observing the formalities with some defects.

" Moreover, Shri D.P.Sarvaiya also is not a resident of Sihor. Hence, the S.S.P.Os. Bhavnagar had ordered for " DENOVO" procedure for misuse of powers in selecting his brother though not eligible".

The applicant states and submits that thus the paras 3(B) subject in brief, para 6-1, 6-2, 6-3, 6-4, 6-5, 6-6, 6-7, 6-8 and affidavit in rejoinder are totally admitted by the respondents and hence the application be allowed and relief prayed for be granted with cost.

7) The applicant submits regarding his residence at Sihor and service at Sihor has produced rent receipts and working certificate and also

certificates of posting hence no further reply because this proof is sufficient.

Section III Method of Recruitment in Swamy complication of service Rules of E.D. staff Fourth Edition page 58.

4(iii) :- E.D.Agents of other categories may, as far as possible, reside in or near the place of their work (letter no. S-9/72-EL Cell dated 18-8-1973 and x 43-312 /78-Pen. dated 20-1-79 stand modified to this extent).

VERIFICATION

I, Rafik Saiyed s/o. Bachubhai Saiyed Ex. E.D.D.A./C.A. Mota Surka H/Q Sihor age adult resident of Sihor, do hereby verify that the contents

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of this application are true to my personal knowledge and belief. I have not suppressed any material facts.

Ahmedabad.

Date. 11-1-93

(R.B.Saiyed)

Signature of applicant.

Identified by me;

(K.C.Bhatt)

Advocate.

Reply/Regoinder/written submissions filed by Mr. ... learned advocate for petitioner / respondent with second ... Copy served/not served & other side

Dt. 20/1/93 By.Registrar C.A T (J) A'bad Bench

(8)

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INDIAN POSTS AND TELEGRAPHS DEPARTMENT

Office of the

सहायक अधिक्षक डाकघर
भावनगर पश्चिम उपमण्डल, भावनगर
Asstt Supdt. of Post Office
Bhavnagar West Sub. Division
BHAVNAGAR-364 001

Memo.No. B2/4/Sevaka dated Bv the 3-1-90

Whereas the post of Extra Departmental Dak/Communication Agent- Motaisaka Lile (Name of post and office of duty) has become vacant/has been newly created and it is not possible to make regular appointment to the said post immediately the undersigned (appointing authority) has decided to make provisional appointment for a period of 90 days from to the said post for a period till regular appointment is made, whichever period is shorter.

Shri Rafik Bachubhai Saiyed (name and address of the selected person) is offered the provisional appointment. He should clearly understand that the provisional appointment will be terminated when regular appointment is made and he shall have no claim for appointment to any post.

3. The undersigned (appointing authority) also reserves the right to terminate the provisional appointment at any time before the period mentioned in Para. I above without notice and without assigning any reason.

4. Shri Rafik Bachubhai Saiyed will be governed by the Extra-Departmental Agents (Conduct and Service) Rules, 1964 as amended from time to time and all other rules and orders applicable to Extra Departmental Agents.

5. In case the above conditions are acceptable to Shri Rafik Bachubhai Saiyed (Name of the selected candidate) he should sign the duplicate copy of this memo. and return the same to the undersigned immediately.

सहायक अधिक्षक डाकघर
भावनगर पश्चिम उपमण्डल, भावनगर
Asstt Supdt. of Post Office
Bhavnagar West Sub. Division
BHAVNAGAR-364 001

To:
Shri

Attested by

सहायक अधिक्षक डाकघर भावनगर मंडल
Dy. Supdt. of Post Offices,
Bhavnagar Dn. BHAVNAGAR-364 001

Filed in Court
Mr A.K. Vasavada
APRaval
09-10-96

Tribunals like Industrial Tribunal is/are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. . . ."

10 The Labour Court will no doubt keep these observations in view in dealing with the dispute referred.

11. This writ petition is thus allowed for the reasons and in terms as set out above. There will be no order as to costs.

IN THE HIGH COURT OF JUDICATURE, PUNJAB AND HARYANA

[Civil Writ Petition No. 7897 of 1976, dated 22 July 1983]

PRESENT:

JUSTICE SRI D. S. TEWATIA

Between

Union of India

and

Labour Court, Jullundur, and another

(Industrial Disputes Act, 1947, Ss. 2 (j) and 12(8) —"Industry"—"Workman"—Definitions of—Government activity—When industry—Tests for—Posts and Telegraphs Department, held, is not an industry—Clerk therein is not workman)

The questions in this case are whether Posts and Telegraphs Department is an industry and whether respondent 2, a clerk therein, is a workman as defined in the Industrial Disputes Act, 1947 and whether an application by him to the Labour Court under S. 33C(2) of the Industrial Disputes Act, 1947, is maintainable.

Held: Activities handled by the Posts and Telegraphs Department, historically speaking, have been handled by the State in this country. Having regard to the importance of communication to the successful co-ordination of the sovereign and regal functions of the State like defence of the country, maintenance of law and order, etc., there is no escape from the conclusion that the activities of the posts and Telegraphs Department are part of the sovereign and regal functions of the State. The ancillary activity of receiving deposits under various savings schemes, maintenance of accounts, etc., is a very minor part of the activity of the department and by no stretch of reasoning could it be considered to be the dominant purpose behind the establishment of the Department of Posts and Telegraphs. What is more, this activity is not severable from the dominant activity of the department in that the very man who is handling telegrams, etc., is also at the same time receiving the deposits and maintaining the account. That person cannot at the same time be both, *i.e.*, "workman" as also "a civil servant." For these reasons, the Posts and Telegraphs Department is not an "industry" and employees thereof are not "workmen." Therefore, the application of respondent 2, before the Labour Court was clearly untenable and the Labour Court had no jurisdiction in the matter.

[Paras. 6 and 7]

For petitioner.—Sri H. S. Brar.

For respondents.—Sri M. S. Bedi.

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JUDGMENT

In this petition the Union of India (hereinafter referred to as the petitioner) has impugned the adverse award rendered by the Labour Court, Jullundur, dated 12 August 1976, on the preliminary objection raised before it by the petitioner to the effect that the application of respondent 2, Sohan Singh Bhatti, invoking the jurisdiction of the Labour Court under S. 33(C) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), was not maintainable as the Posts and Telegraphs Department, in which he was employed as a clerk, could not be termed an "industry" as defined in the Act and respondent 2 could not be treated as a "workman."

2. The Labour Court, after liberally quoting from the decisions of the Supreme Court in *Workmen of Indian Standards Institution* v. *Indian Standards Institution* [1978—I L. L. N. 26] and *Madras Gymkhana Club Employees' Union* v. *Madras Gymkhana Club* [A. I. R. 1968 S.C. 554], held the Posts and Telegraphs Department to be falling within the definition of "industry" as defined under the Act.

3. What constitutes an "industry" is an area, the twilight part whereof is covered by a plethora of decided cases both of the High Courts and of the apex Court. In regard to the borderline matters, every new decided case instead of showing any light has, in fact, added to the confusion, more so, if the Court opted to widen the beneficial swoop of the expression "industry." Their Lordships in what can be termed as the ultimate dictum on the point, *Banglore Water Supply and Sewerage Board* v. *A. Rajappa* [1978—I L. L. N. 376 and 657], sought to clearly delineate the scope of the expression "industry" and in the process overruled some of its own earlier judgments as well as those of the High Courts. The endeavour was justified but with what success it is difficult to say. Two of the Judges, who had rendered their opinion later, had invoked the legislative interference to clear the confusion and set the matter right. So, it is not surprising that the discerning of the ratio of the judgment itself posed a problem to the Courts and one of the matters here concerning Public Works Department (Bridges and Roads) required the intervention of a Full Bench in *State of Punjab* v. *Sh. Kuldip Singh and another* [1983—I L. L. N. 576], to identify the true ratio of *Bangalore Water Supply* case (*vide supra*) and apply the same to the facts before it. I would, therefore, profit by the spade work done by the Full Bench in this regard, rather than take upon myself to analyse afresh the ratio of that case.

4. Sandhawalia, C. J., who delivered the opinion for the Bench in the light of the ratio of the Supreme Court judgments, divided the governmental activity into the following four categoris (in Para. 11, at pages 581 and 582):

". . . (1) The sovereign or the regal functions of the State which are the primary and inalienable rights of a constitutional Government.

(2) Economic adventures clearly partaking of the nature of trade and business undertaken by it as part of its welfare activities.

(3) Organized activity not stamped with the total indicia of business yet bearing a resemblance to or being analogous to trade and business.

(4) The residuary organized governmental activity which may not come within the ambit of the aforesaid three categories."

The Bench found that the first category as also the fourth category is out of bounds of the Act. To the second category the Act was undoubtedly held applicable and category third is held to be constituting although a borderline category but the provisions of the Act were held to cover this category also.

5. The Full Bench applied two tests in order to judge whether a given governmental activity fell in the first, fourth or the third category. First test was to see as to what was the dominant purpose of the governmental activity. If the dominant purpose was one which could be considered to carry on an activity which is analogous to "trade"

...," then it would fall in ...B. But if the dominant purpose ...y on the sovereign or regal ...ding with a minor activity which ...considered to be analogous to the ...n of "business" or "trade" and ...activity was not severable from ...nant activity, then the given governmental activity would fall in first category.

...ities handled by the Posts and ...Department, historically speaking, ...handled by the State in this country. ...ard to the importance of communi... the successful co-ordination of ...n and regal functions of the ...defence of the country, maintenance ...and order, etc., there is no ...the conclusion that the activity ...by the Posts and Telegraphs ...fall within the first category. ...ganisation of the Posts and ...Department has as, its dominant ...the performance of sovereign and ...ions of the State. The ancillary ...receiving deposits under various savings schemes, maintenance of acco... etc., is a very minor part of the activity of department and by no stretch of reasoning could it be considered to be the dominant purpose behind the establishment of the Department of Posts and Telegraphs. What is more, this activity is not severable from the dominant activity of the department in that the very man who is handling telegrams, etc., is also at the same time receiving the deposits and maintaining the account. That person cannot at the same time be both, *i.e.*, "workman" as also "a civil servant."

7. For the reasons aforementioned, I hold that the Posts and Telegraphs Department is not an "industry" and employees thereof are not "workmen." Therefore, the application of respondent 2, before the Labour Court was clearly untenable and the Labour Court had no jurisdiction in the matter.

8. In view of the above, I quash the impugned award and allow the petition with no order as to costs.

IN THE HIGH COURT OF JUDICATURE, RAJASTHAN

[S.B. Civil Writ Petition No. 1930 of 1983, dated 19 December 1983]

PRESENT:

JUSTICE MISS KANTA BHATNAGAR

Between

Asu Singh

and

State of Rajasthan

...tion of India, Art. 226 — Transfer of Government servant — Allegation of mala fide *...non-existence of administrative exigency — Proof of — High Court, if and when can ...fere when there is a case of* mala fide :

...writ petition, the petitioner, an ...of the Education Department, ...ment of Rajasthan, has prayed for ...g the order of his transfer on ...d that the same has been passed ...any administrative agency and that ...r to accomodate non-petitioner 3 ...instance of political leaders, the ...ed authority without applying its ...passed the hasty order of his transfer.

Held : An employee cannot claim as of right to be on the post carrying with it special pay. If the administrative exigency so require, he may be transferred at any time. However, if one person is not allowed that special pay for a reasonable period even and the other person enjoying that benefit for long is again favoured and retransferred to that very post in that very institution, there may be reasonable cause

Approved under
MA No. 419 of 94

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

O.A./TA/MA/RA/CA No. 396 /94 in 04/92/92

U.O.I. & Ors.
APPLICANT (S)

MR. Akil Kureshi
COUNSEL

VERSUS

MR. Rafik Sayed
RESPONDENT (S)

COUNSEL

Date	Office Report	ORDERS
	Extension of Time	D.O. 26-7-94

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1

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

MISC. APPLICATION NO. 336 OF 1994

IN

ORIGINAL APPLICATION NO. 92 OF 1992

1. The Union of India
The Director General,
Department of Posts,
Ministry of Communication,
Parliament Street,
New Delhi 110 001.

2. The Chief Postmaster General,
Gujarat Circle,
Ahmedabad 380 001.

3. The Postmaster General,
Rajkot Region,
Rajkot 360 001.

4. The Senior Supdt. of Post Offices,
Bhavnagar Division,
Bhavnagar 364 001.

5. The Asstt. Supdt. of Post Offices,
Bhavnagar Division,
Bhavnagar 364 001.

.....Applicants
(Org. Respondents)

Vs.

Rafik Saiyed,
Ex-EDDA/CA, Mota Surka,
H.Q. Sihor.

.....Respondent
(Org. Applicant)

Misc. Application for extension of time limit for complying with the directions of the Honourable Tribunal.

The applicants above named most respectfully begs to submit as under :

1. The applicants are the original respondents in the original application No. 92 of 1992 filed by the respondent (Org. applicant). The said original application No. 92 of 1992 came to ~~the~~ be disposed of by the judgement dated 10-6-94 (Copy at Annexure-A hereto). The operative portion of the said order reads as follows :

" The application is allowed. The order of the ASPOs, Bhavnagar dated 23-4-1991 be quashed and set aside. The respondents are directed to reinstate the applicant in service within one month from the date of receipt of this judgement

Presented by
Mr. Akil Kureshi
Adv.
19/7/94

2+0=2

Contd. at ...2...

(2)

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with full backwages. It must be paid within four months from the date of the receipt of this order. The respondents may terminate the services of the applicant, if they so desire, as per the provisions of Industrial Disputes Act. The application is disposed of accordingly. No order as to costs."

2. It is submitted that the present applicants have decided to approach the Honourable Supreme Court of India by filing special leave petition against the said judgement dated 10-6-94. The applicants further submit that process for filing the special leave petition has already been initiated by the applicants. It is submitted that filing of the S.L.P., getting the same placed before the Hon'ble Supreme Court and obtaining the order thereon is likely to take some time and therefore, the time limit granted by this Honourable Tribunal for carrying out direction with respect to reinstatement is required to be extended in the interest of justice. It is submitted that this Honourable Tribunal be pleased to extend the time limit for reinstating the Org. applicant (respondent) by further period of three months (over and above one month granted in the judgement).

3. The applicants therefore, pray that this Honourable Tribunal be pleased :

(A) to extend the time limit granted for complying with the direction regarding reinstatement of the respondent (Org. applicant) a s per judgement (Annexure-A) by further period of three months ;

(B) to grant such other and further relief as may be deemed just and proper.

Ahmedabad,
Date: -7-94

प्रवर अधीक्षक डाकघर, भावनगर मंडल
Senior Superintendent of Post Offices
Bhavnagar Dn., Bhavnagar 364 001

Verification

I, G.L. Raval working as Sr. Supdt. of Pos Bhavnagar Dn. do hereby verify and state that what is stated above is true to my knowledge, information and belief and I believe the same to be true. I have not suppressed any material facts.

Verified at Ahmedabad on this _____ day of July, 1994.

प्रवर अधीक्षक डाकघर, भावनगर मंडल
Senior Superintendent of Post Offices
Bhavnagar Dn., Bhavnagar 364 001

Submitted.

Application has been scrutinized and found to be in order. May be placed before Hon'ble Bench for necessary order.

21/07/94

SO(J).

21/7/94

DR(J)
(on Leave)

Mr. Akil Kureshi

Annex-A

(3) 89

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 92 OF 1992

~~T.A.NO.~~

DATE OF DECISION 10-6-1994.

Mr. Rafik Saiyed, Petitioner

Mr. K.C. Bhatt, Advocate for the Petitioner (x)

Versus

Union of India & Ors. Respondent s

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

CORAM

The Hon'ble Mr. V. Radhakrishnan, Adm. Member.

The Hon'ble ~~Mr.~~ Dr. R.K. Saxena, Judicial Member.

(4) 90

Rafik Saiyed,
E.D.D.A./C.A.,
Mota Surka H/Q Sihor. .... Applicant.

(Advocate: Mr. K.C. Bhatt)

Versus

1) Union of India through
The Director General
Department of Posts
Ministry of Communication
Parliament Street,
New Delhi - 110 001.

2) The Chief Postmaster General
Gujarat Circle
Ahmedabad - 380 001.

3) The Postmaster General,
Rajkot Region, Rajkot.

4) The Senior Supdt. of Post Offices,
Bhavnagar Division
Bhavnagar.

5) The Asstt. Supdt. of Post Offices,
Bhavnagar Division
Bhavnagar. ..... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A.No. 92 OF 1992

Date: 10-6-1994.

Per: Hon'ble Mr. V. Radhakrishnan, Adm. Member.

Heard Mr. K.C. Bhatt, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondents.

2. The applicant was appointed as EDDA at Mota Surka Headquarters Sihor and he joined duties on 6-12-1989. His services were terminated on 23-4-1991. He submitted appeal to Sr. S.P.O. Bhavnagar against termination but with

..... 3/-

no result. The allegation of the applicant is that his services were terminated in order to accomodate a relative of the Asstt. Supdt of Post Offices. The applicant, therefore, challenged the termination which was done without following disciplinary procedure and without following statutory provisions of the I.D. Act. He claims that he was fully qualified for the post and he had completed 507 days of service from 6.12.1989 to 26.4.1991. He quoted several judgments in support of his case. He has claimed the following reliefs:

> "Relief(s) sought:-
>
> In view of the facts mentioned in para-6 above the applicant prays for following relief:-
>
> (i) The order of Asstt. Supdt. of Post Offices, Bhavnagar Sub Dn.No.PF/ELA/Mota Sukha dated 23-4-91 be quashed and set aside.
>
> (ii) The respondents be directed to re-instate the applicant immediately and he should be treated as re-instated as on 26-4-91 with all consequential benefits being treated as in job from 26-4-91.
>
> (iii) The respondents ~~please~~ be directed to pay th cost of this application as the applicant is very poor and very low paid servant and belongs to minority community backward class.
>
> (iv) Any other suitable relief may please be granted."

3. The respondents have filed reply. They have stated that the applicant was appointed purely on provisional and adhoc basis and his appointment was liable to be terminated at any time without giving

(6) 91

reasons or without iss[illegible] notice. As the applicant had accepted these conditions, he can not challenge the termination. The contention of the respondents is that as the applicant's appointment was purely provisional and on adhoc basis, it was not necessary to follow statutory provisions of I.D. Act. They have stated that Shri Sarvaiya who was selected in applicant's place, was fully qualified. They have stated that Shri Sarvaiya has passed 10th Standard but the applicant had passed only 9th standard, Because of certain lacuna in his recruitment, de novo procedure for recruitment was ordered in November 1991.

4. The applicant has filed rejoinder. He denied that he was appointed on provisional and adhoc basis. He has reiterated that he worked for 507 days without any break. He was appointed on a regular post. He has repeated the allegation that he was terminated in order to accomodate the brother of the A.S.P. He has stated that he has sent the appeal to SSP Bhavnagar under Certificate of Posting and produced xerox copies. He has stated that he is fully qualified to hold the post of EDDA. He was registered ~~his name~~ in Employment Exchange. The respondents have given further reply to the rejoinder.

..... 5/-

They have sta[illegible] even though the post of EDDA was vacant, the a[illegible] was appointed due to urgency as procedural formalities took time for getting the post filled on regular basis and in order to carry on the work, the applicant was appointed on adhoc basis. They have stated that the applicant is not a resident of the village, but he is resident of Songadh.

They have denied that the applicant gave any appeal. In view of the above, the respondents have prayed for rejection of the applicant's Original Application. The applicant has given further rejoinder. He has repeated that he was appointed against the regular vacant post. The appointment of Shri Sarvaiya in place of the applicant was irregular and illegal. The applicant has claimed that he is resident of Sihor.

5. During the arguments Mr. K.C. Bhatt, learned advocate for the applicant stressed on the point that in view of the very judgment of this Bench the Postal Department is treated as Industry and the Industrial Disputes Act applies to them. Hence the termination of the services of the applicant without following legal procedure under the statute, was illegal as the applicant had completed 507 days of continuous service as EDDA. Mr. Akil Kureshi, on behalf of the respondents, pointed

(8)

92

out that the appointment of the applicant was on ad hoc and temporary basis and liable to be terminated at any time. He also produced copy of appointment letter dated 3.1.1990 regulating the period of appointment to 90 days. He also pointed out that the judgment of the High Court of Punjab & Haryana in Civil Writ Petition No. 7897 of 22nd July, 1983 stating that the P & T Department is not an Industry and hence provisions of the I.D. Act could not apply to this case.

6. It is seen that the respondents have not denied the fact that the applicant had worked for 507 days before his services were terminated. In the first order, Ann.A-1 there was no period specified by the respondents and in the order dated 3-1-90 produced by Mr. Akil Kureshi during the hearing, it is specified that the appointment will be for 90 days or until the regular appointment is made whichever period is shorter. In this context Mr. K.C. Bhatt, learned advocate for the applicant objected to the production of this document at the hearing stage and alleged that it was an after thought as this document was not produced along with the written statement. Even assuming that this letter was issued the period of 90 days expired on 2-4-90 but still the applicant was continued in service upto 26-4-91 without further order.

..... 7/-

(9)

Hence it is not possible to accept the contention that the appointment was made for fixed period.

7. It is undisputed fact that the applicant had completed 507 days and hence statutory procedure under I.D.Act like notice and retrenchment compensation should have been followed, as he had completed more than 240 days in the year prior to retrenchment. This was not done in this case and this is a clear violation of the I.D.Act provisions. The respondents have also not taken the argument of P & T Department not being Industry in the written statement. Only during argument Mr. Akil Kureshi pointed out that P & T Department could not be treated as Industry and referred to the decision of the Punjab & Haryana High Court's decision in Civil Writ Petition No. 7897 of 22nd July, 1983. This Bench of the Tribunal has all along been holding that the P & T Department is an Industry and hence subject to the statutory provision of the I.D.Act. It has been decided, for example, O.A.No.278/89 decided on 1.10.1991 that the provisions of the I.L.Act would apply to an EDA as he would be a workman as defined in I.D.Act. It has also been decided in the case of R.Padmanabhan Nair V/s. Superintendent of Post Offices, 1993 SLR, CAT Ernakulam Bench, page 610, that even a substitute who was allowed to work in the post office continuously for a long time,

(10) 93

is a workman under the I.D.Act and an action has to be taken as per the provisions of the Act. It is settled law that P & T Department is an industry. Calcutta Bench of Central Admni Tribunal in Ashok Kumar Sinha Vs. Union of India & others 1989 Lab.I.C. 670 took this view and it was based on the decision of Kerala High Court in Kunjan Bhaskaran and Others Vs. Sub Divisional Officer Telegraphs. Changanessary and Others, 1983 Lab. I.C.135. Ahmedabad Bench of Central Admn.Tribunal also took the same view in M.A.Bukhari Vs. Union of India and Others AIR 1989 (1) CAT 162. It is clear that P & T is an industry and the applicant who was a Extra Departmental Agent - , was a workman. As the applicant has completed more than 240 days in a year prior to his termination, the respondents could not terminate his service without following the provisions of the I.D.Act as it would amount to retrenchment. If the respondents did not want to allow continue the applicant by giving him regular appointment as EDDA, they were entitled to retrench the applicant, but that could be done by following the provisions of Section 25 F of the I.D.Act. In this view of the matter, we hold that the action of the respondents in terminating the services of the applicant was bad in law and it has to be quashed and the applicant is entitled to reinstatement in service as EDDA. Hence, we pass the following order ;

O R D E R

The application is allowed. The order

(11)

of the ASPO Bhavnagar dated 23.4.1991 be quashed and set aside. The respondents are directed to reinstate the applicant in service within one month from the date of receipt of this judgment with full backwages. It must be paid within four months from the date of the receipt of this order. The respondents may terminate the services of the applicant, if they so desire, as per the provisions of Industrial Disputes Act. The application is disposed of accordingly. No order as to costs.

(Dr.P.K.Saxena)
Member (J)

(V.Radhakrishnan)
Member (A)

*VTC
XXXX

Recd.
21-6-94.

MA/STI/503/94

MA/494/94

in

OA/92/92

U.O.I. & Ors.

— MR. Akil Kureshi (Adv.)

v/s

MR. Rafik Sayyed

— MR. K.C. Bhatt (Adv.)

— Extension of Time

DID
05.10.94

95

MA-37 503/94

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDBAD BENCH

MISC. APPLICATION NO. 494 OF 1994

Dio 05-10-94

IN

ORIGINAL APPLICATION NO. 92 OF 1992

1. The Union of India
(through the Director General,
Department of Posts,
Ministry of Communications,
Parliament Street, New Delhi 110 001)

Recd Copy on 5-9-94 Michael 5-9-94

2. The Chief Postmaster General,
Gujarat Circle,
Ahmedabad 380 001.

3. The Postmaster General,
Rajkot Region, Rajkot.

4. The Sr.Superintendent of Post Offices,
Bhavnagar Division,
Bhavnagar.

5. The Asst. Supdt. of Post Offices,
Bhavnagar Division,
Bhavnagar. Applicants

(org.Respondents)

Presented by
Mr. Akil Kureshi
Adv

2+0=2 5/9

Filed by Mr... Akil Kureshi
learned Advocate for Petitioners
with second set & ... NIL ... spares
copies copy served/~~not served~~ to
other side

by ABhaskar 5/9/94 Dy.Registrar C.A.T.
A'bad Bench

Vs.

Shri Rafik Saiyed,

E.D.D.A./C.A.

Mota Surka H/Q Sihor. Respondent

(org. applicant)

Misc. Application for extension of time for implementing the directions contained in the judgment of the Honourable C.A.T. in O.A. No.92/92 dt.10.6.1994.

The applicants abovenamed most respectfully beg to submit as under:

1. The present applicants are the original respondents in the Original Application No.92 of 1992 filed by the present respondent (org. applicant). The said original application No.92 of 1992 came to be disposed of by the Honourable Tribunal by its judgment dated 10.6.1994 (copy at **Annexure-A** hereto). The oeprative part of the judgment reads as under:

> "The application is allowed. The order of the ASPO Bhavnagar dated 23,4,1991 be quashed and set aside. The respondents are directed to reinstate the applicant in service within one month from the date of receipt of this judgment with full backwages. It must be paid within four months from the date of receipt of this order. The respondents

may terminate the services of the applicant,if they so desire, as per the provisions of the Industrial Disputes Act. The appication is disposed of accordingly. No order as to costs."

2. It is submitted that certified copy of the said order was ready on 14.3.1994 which was thereafter collected by the learned Add.Central Govt. Standing Counsel and it was forwarded to the apppliant-department. Thereafter the ld.Addl.Central Govt. Standing Counsel was requested to give his opinion with respect to the said judgment and the opinion was received on 30.6.1994. It is submitted that as per the said decision of this honourable Tribunal the org. appilcant is ordered to be reinstated within one month from the date of receipt of the judgment with full backwages which is required to be paid within four months from the date of receipt of the order. It is submitted that the Department is desirous of filing Special Leave Petition before the Honourable Supreme Court of India and therefore, the time limit granted for carrying out the directions contained in the said order is required to be extended in the interest of justice. It is submitted that the period of one month granted for reinstating the org. applicant with full backwages is extrmely short and that the said period be

extended to the period of four months from the date of receipt of the order, in the interest of justice.

3. It is submitted that the present applicants had filed one Misc. Application being Misc. Application No. 396 of 1994 before this Honourable Tribunal wherein this Honourable Tribunal was pleased to extend the time for compliance of the directions contained in the above mentioned judgment upto 26.8.1994. Hereto annexed and marked Annexure-B is a copy of the said order dated 22.7.1994. It is further submitted that after receipt of the judgment in said O.A. the applicants have taken suitable steps for the purpose of filing Special Leave Petition before the Honourable Supreme Court of India. However, on account of administrative delays the same has not been filed and the same is likely to take some more time and the time granted by this Honourable Tribunal earlier and extended thereafter vide order Annexure-B is further required to be extended by two months from the date of filing of this Misc. Application.

4. The applicants therefore, pray that this Hon'ble Tribunal be pleased:

(A) to extend the time for compliance of the directions contained in judgment/order

Annexure-A dt.10.6.1994 and threafter extended by order dt.22.7.1994 (Annex.B) be futher extended by two months from date of filing of this Misc. Application

(B) to grant such other and further relief as may be deemed just and proper.

Ahmedabad,
Dt 26-8-1994.

Senior Superintendent of Post Offices
Bhavnagar Div., Bhavnagar 364 001

Verification

I, H.B. Chauhan
working as Sr. Supdt. of Pos Bhavnagar
with the applicant No.__herein, do hereby verify and state that what is stated above is true to my knowledge, information and belief and I believe the same to be true. I have not suppressed any material facts.

Verified at Ahmedabad on this 26th day of Aug. 1994.

Senior Superintendent of Post Offices
Bhavnagar Div., Bhavnagar 364 001

Submitted

Application has been scrutinized and found to be in order. May be placed before Hon'ble Bench for necessary order.

29.09.94

30.9.94

30/9/94

SO(J)

DR(J)

Annex-A
f56
B2
98

Mr K. C. Bhatt
Advocate

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 92 OF 1992

DATE OF DECISION 10-6-1994.

Mr. Rafik Saiyed, Petitioner

Mr. K.C. Bhatt, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent s

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

CORAM

The Hon'ble Mr. V. Radhakrishnan, Adm. Member.

The Hon'ble Mr. Dr. R.K. Saxena, Judicial Member.

Rafik Saiyed,
E.D.D.A./C.A.,
Mota Surka H/Q Sihor. .... Applicant.

(Advocate: Mr. K.C. Bhatt)

Versus

1) Union of India through
The Director General
Department of Posts
Ministry of Communication
Parliament Street,
New Delhi - 110 001.

2) The Chief Postmaster General
Gujarat Circle
Ahmedabad - 380 001.

3) The Postmaster General,
Rajkot Region, Rajkot.

4) The Senior Supdt. of Post Offices,
Bhavnagar Division
Bhavnagar.

5) The Asstt. Supdt. of Post Offices,
Bhavnagar Division
Bhavnagar. ..... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A.No. 92 OF 1992

Date: 10-6-1994.

Per: Hon'ble Mr. V. Radhakrishnan, Admn. Member.

Heard Mr. K.C. Bhatt, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondents.

2. The applicant was appointed as EDDA at Mota Surka Headquarters Sihor and he joined duties on 6-12-1989. His services were terminated on 23-4-1991. He submitted appeal to Sr. S.P.O. Bhavnagar against termination but with

reasons or without issuing any notice. As the [illegible]nt had accepted these conditions, he can not challenge the termination. The contention of the respondents is that as the applicant's appointment was purely provisional and on adhoc basis, it was not necessary to follow statutory provisions of I.D. Act. They have stated that Shri Sarvaiya who was selected in applicant's place, was fully qualified. They have stated that Shri Sarvaiya has passed 10th Standard but the applicant had passed only 9th standard, Because of certain lacuna in his recruitment, de novo procedure for recruitment was ordered in November 1991.

4. The applicant has filed rejoinder. He denied that he was appointed on provisional and adhoc basis. He has reiterated that he worked for 507 days without any break. He was appointed on a regular post. He has repeated the allegation that he was terminated in order to accomodate the brother of the A.S.P. He has stated that he has sent the appeal to SSP Bhavnagar under Certificate of Posting and produced xerox copies. He has stated that he is fully qualified to hold the post of EDDA. He was registered ~~his name~~ in Employment Exchange. The respondents have given further reply to the rejoinder.

They have stated that even though the post was vacant, the applicant was appointed due to urgency procedural formalities took time for getting the post filled on regular basis and in order to carry on the work, the applicant was appointed on adhoc basis. They have stated that the applicant is not a resident of the village, but he is resident of Songadh.

They have denied that the applicant gave any appeal. In view of the above, the respondents have prayed for rejection of the applicant's Original Application. The applicant has given further rejoinder. He has repeated that he was appointed against the regular vacant post. The appointment of Shri Sarvaiya in place of the applicant was irregular and illegal. The applicant has claimed that he is resident of Sihor.

During the arguments Mr. K.C. Bhatt, learned advocate for the applicant stressed on the point that in view of the very judgment of this Bench the Postal Department is treated as Industry and the Industrial Disputes Act applies to them. Hence the termination of the services of the applicant without following legal procedure under the statute, was illegal as the applicant had completed 507 days of continuous service as EDDA. Mr. Akil Kureshi, on behalf of the respondents, pointed

out t appointment of the applicant was on adhoc and t ry basis and liable to be terminated at any time. He also produced copy of appointment letter dated 3.1.1990 regulating the period of appointment to 90 days. He also pointed out that the judgment of the High Court of Punjab & Haryana in Civil Writ Petition No. 7897 of 22nd July, 1983 stating that the P & T Department is not an Industry and hence provisions of the I.D. Act could not apply to this case.

6. It is seen that the respondents have not denied the fact that the applicant had worked for 507 days before his services were terminated. In the first order, Ann.A-1 there was no period specified by the respondents and in the order dated 3-1-90 produced by Mr. Akil Kureshi during the hearing, it is specified that the appointment will be for 90 days or until the regular appointment is made whichever period is shorter. In this context, Mr. K.C. Bhatt, learned advocate for the applicant objected to the production of this document at the hearing stage and alleged that it was an after thought as this document was not produced along with the written statement Even assuming that this letter was issued the period of 90 days expired on 2-4-90 but still the applicant was continued in service upto 26-4-91 without further order.

Hence it is not [illegible] to accept the contentio[illegible] the appointment w[illegible] for fixed period.

7. It is undisputed fact that the applicant had completed 507 days and hence statutory procedure under I.D.Act like notice and retrenchment compensation should have been followed, as he had completed more than 240 days in the year prior to retrenchment. This was not done in this case and this is a clear violation of the I.D.Act provisions. The respondents have also not taken the argument of P & T Department not being Industry in the written statement. Only during argument Mr. Akil Kureshi pointed out that P & T Department could not be treated as Industry and referred to the decision of the Punjab & Haryana High Court's decision in Civil Writ Petition No. 7897 of 22nd July, 1983. This Bench of the Tribunal has all along been holding that the P & T Department is an Industry and hence subject to the statutory provision of the I.D.Act. It has been decided, for example, O.A.No.278/89 decided on 1.10.1991 that the provisions of the I.D.Act would apply to an EDA as he would be a workman as defined in I.D.Act. It has also been decided in the case of R.Padmanabhan Nair V/s. Superintendent of Post Offices, 1993 SLR, CAT Ernakulam Bench, page 610, that even a substitute who was allowed to work in the post office continuously for a long time,

is a workman under the I.D.Act and an action has to be taken as per the provisions of the Act. It is settled law that P & T Department is an industry. Calcutta Bench of Central Admn. Tribunal in Ashok Kumar Sinha Vs. Union of India & others 1989 Lab.I.C. 670 took this view and it was based on the decision of Kerala High Court in Kunjan Bhaskaran and Others Vs. Sub Divisional Officer Telegraphs. Changanessary and Others, 1983 Lab. I.C.135. Ahmedabad Bench of Central Admn.Tribunal also took the same view in M.A.Bukhari Vs. Union of India and Others AIR 1989 (1) CAT 162. It is clear that P & T is an industry and the applicant who was a Extra Departmental Agent - , was a workman. As the applicant has completed more than 240 days in a year prior to his termination, the respondents could not terminate his service without following the provisions of the I.D.Act as it would amount to retrenchment. If the respondents did not want to allow continue the applicant by giving him regular appointment as EDDA, they were entitled to retrench the applicant, but that could be done by following the provisions of Section 25 F of the I.D.Act. In this view of the matter, we hold that the action of the respondents in terminating the services of the applicant was bad in law and it has to be quashed and the applicant is entitled to reinstatement in service as EDDA. Hence, we pass the following order ;

O R D E R

The application is allowed. The order

of the ASPO Bhavnagar dated 23.4.1991 be quashed and set aside. The respondents are directed to reinstate the applicant in service within one month from the date of receipt of this judgment with full backwages. It must be paid within four months from the date of the receipt of this order. The respondents may terminate the services of the applicant, if they so desire, as per the provisions of Industrial Disputes Act. The application is disposed of accordingly. No order as to costs.

Sd/-

(Dr.P.K.Saxena)
Member (J)

Sd/-

(V.Radhakrishnan)
Member (A)

Prepared by : 14/6/94
Compared by :

CCPS

*VTC
XXXX

CBhagat

Deputy Registrar
Ahmedabad Bench

15/6/94

Ms- Arek Kareshi

Annx-B.

106

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

M.A./396/94 in O.A./92/92

26.7.1994

Heard the learned counsel for the parties. M.A./396/94 for extension of time allowed. Time extended till 30.8.1994. M.A. stands disposed of accordingly.

Sd/-
(Dr.R.K. Saxena)
Member (J)

Sd/-
(K. Ramamoorthy)
Member (A)

*K

Prepared by : 28/7/94
Compared by :
True Copy

Member (J)
Central Administrative Tribunal
Ahmedabad Bench

प्रधान अधिवक्ता कार्यालय
भावनगर खंडपीठ
भावनगर - 364001
- 8 AUG 1994
प्राप्त किया
RECEIVED

Ma/St/589/94

-10f

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

O.A./T.A./M.A./R.A./C.A. No. 564/94 in 04/92/92

U.O.I. & Ors. — APPLICANT (S)

MR. Akil Kureshi — COUNSEL

VERSUS

MR. Rafik Sayyed — RESPONDENT (S)

MR. K.C. Bhatt — COUNSEL

DATE	OFFICE REPORT	ORDER
	Extension of Time	D.L.O. 12.94

108

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

MA-57/589/94

MISC. APPLICATION NO. 564 OF 1994

D10
05-12-94

IN

ORIGINAL APPLICATION NO. 92 of 1992

I will served copy of MA to otherside's advocate
Akil Kureshi
Adv

1. The Union of India
(through the Director General,
Department of Posts,
Ministry of Communications,
Parliament Street, New Delhi 110 001)

2. The Chief Postmaster General,
Gujrat Circle,
Ahmedabad 380 001.

3. The Postmaster General,
Rajkot Region, Rajkot.

4. The Sr. Superintendent of Post Offices,
Bhavnagar Division,
Bhavnagar

5. The Asst. Supdt. of Post Offices,
Bhavnagar Division,
Bhavnagar.

Applicants
(Org. Respondents)

Filed by Mr. Akil Kyresh,
Learned Advocate for Petitioners
with second set
copies only served to
other side

Vs.

7-11-94

By Registered post
A.D.

Shri Rafik Saiyed,

E.D.D.A. / C.A.

Mota Surka H/Q Sihor.

Respondent
(Org. applicant)

Presented by
Mr. Akil Kureshi
Adv
2/12/94

2+0=2

Misc. Application for extension of time for implementing the directions contained in the judgement of the Honourable C.A.T. in O.A. No. 92/92 Dtd. 10.6.1992 ::::::::::::::::::

The applicants abovenamed most respectfully beg to submit as under :

1. The present applicants are the original respondents in the Original Application No.92 of 1992 filed by the present respondent (org. applicant). The said original application No.92 of 1992 came to be disposed of by the Honourable Tribunal by its judgement dated 10.6.1994 (copy at Annexure-A hereto). The operative part of the judgement reads as under:

> "The application is allowed. The order of the ASPO Bhavnagar dated 23.4.1991 be quashed and set aside. The respondents are directed to reinstate the applicant in service within one month from the date of receipt of this judgement with full backwages. It must be paid within four months from the date of receipt of this order. The respondents may terminate the services of the applicant, if they so desire, as per the provisions of the Industrial Dispute Act. The application is disposed of accordingly. No order as to costs."

2. It is submitted that certified copy of the said order was ready on 14.3.1994 which was thereafter collected by the learned Add.Central Govt. Standing Counsel and it was forwarded to the applicant-department.

Thereafter the Addl.Central Govt. Standing Counsel was requested to give his opinion with respect to the said judgement and the opinion was received on 30.6.1994. It is submitted that as per the said decision of this honourable Tribunal the org. applicant is ordered to be reinstated within one month from the date of receipt of the judgement with full backwages which is required to be paid within four months from the date of receipt of the order. It is submitted that the Department is desirous of filing Special Leave Petition before the Honourable Supreme Court of India and therefore, the time limit granted for carrying out the directions contained in the said order is required to be extended in the interest of justice. It is submitted that the period of one month granted for reinstating the org. applicant with full backwages is extrmely short and that the said period be extended to the period of four months from the date of receipt of the order, in the interest of justice.

3. It is submitted that the present applicants had filed one Misc. application being Misc. Application No.396 of 1994 before this Honourable Tribunal wherein this Honourable Tribunal was pleased to extend the time for compliance of the directions contained in the above mentioned judgement upto 26.8.94. Hereto annexed and marked Annedure-B is a copy of the said order dated 22.7.94. It is further sbumitted that the present applicants had filed second Misc.Application being Misc. Application No.494 of 1994 before this Honourable Tribunal where in this Honourable Tribunal was pleased to extend further time upto 26.10.94 Annex-C for compliance of the directions contained in the above judgement. It is further submitted that after receipt of the judgement in said OA the Applicants have taken suitable steps for the purpose of filing special leave petition before the Honourable Supreme Court of India. However, on account of administrative delays the same has not been filed and the same is likely to take some more time and the time granted by this Honourable Tribunal earlier and extended thereafter vide order

vide order Annex-B and Annexure-C is further required to be extended by two months from the date of filing of this Misc. Application.

4. The applicants therefore, pray that this Hon'ble Tribunal be pleased :

(A) to extend the time for compliance of the directions contained in judgement/order Annexure-A dt.10.6.1994 and thereafter extended by order dt.22.7.1994(Annex.B) and by order dated 7.10.94(Annex-C) be further extended by two months from date of filing of this Misc. Application.

(B) to grant such other and further relief as may be deemed just and proper

Senior Superintendent of Post Offices
Bhavnagar Dn. Bhavnagar-364 001

Ahmedabad

Date:

Verification

I, H. B. Chauhan working as Senior Supdt. of Post Offices, Bhavnagar with the applicant No.__ herein do hereby verify and state that what is stated above is true to my knowledge, information and belief and I believe the same to be true. I have not suppressed any material facts.

Verified at Ahmedabad on this _____day of _____ 1994.

Senior Superintendent of Post Offices
Bhavnagar Dn. Bhavnagar-364 001

Submitted.

Application has been scrutinized and found to be in order. May be placed before Hon'ble Bench for necessary order.

11/11/94

SO (J)

11/11/94

DR (J)

Mr. Akil Kureshi

O/C. 112

Annex-A

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 92 OF 1992

DATE OF DECISION 10-6-1994.

Mr. Rafik Saiyed, Petitioner

Mr. K.C. Bhatt, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent s

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

CORAM

The Hon'ble Mr. V. Radhakrishnan, Adm. Member.

The Hon'ble Mr. Dr. R.K. Saxena, Judicial Member.

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Rafik Saiyed,
E.D.D.A./C.A.,
Mota Surka H/Q Sihor. .... Applicant.

(Advocate: Mr. K.C. Bhatt)

Versus

1) Union of India through
The Director General
Department of Posts
Ministry of Communication
Parliament Street,
New Delhi - 110 001.

2) The Chief Postmaster General
Gujarat Circle
Ahmedabad - 380 001.

3) The Postmaster General,
Rajkot Region, Rajkot.

4) The Senior Supdt. of Post Offices,
Bhavnagar Division
Bhavnagar.

5) The Asstt. Supdt. of Post Offices,
Bhavnagar Division
Bhavnagar.
..... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A.No. 92 OF 1992

Date: 10-6-1994.

Per: Hon'ble Mr. V. Radhakrishnan, Admn. Member.

Heard Mr. K.C. Bhatt, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondents.

2. The applicant was appointed as EDDA at Mota Surka Headquarters Sihor and he joined duties on 6-12-1989. His services were terminated on 23-4-1991. He submitted appeal to Sr. S.P.O. Bhavnagar against termination but with

no result. The allegation of the applicant is that his services were terminated in order to accomodate a relative of the Asstt. Supdt of Post Offices. The applicant, therefore, challenged the termination which was done without following disciplinary procedure and without following statutory provisions of the I.D. Act. He claims that he was fully qualified for the post and he had completed 507 days of service from 6.12.1989 to 26.4.1991. He quoted several judgments in support of his case. He has claimed the following reliefs:

"Relief(s) sought:-

In view of the facts mentioned in para-6 above the applicant prays for following relief:-

(i) The order of Asstt. Supdt. of Post Offices, Bhavnagar Sub Dn.No.PF/ELA/Mota Sucka dated 23-4-91 be quashed and set aside.

(ii) The respondents be directed to re-instate the applicant immediately and he should be treated as re-instated as on 26-4-91 with all consequential benefits being treated as in job from 26-4-91.

(iii) The respondents ~~please~~ be directed to pay the cost of this application as the applicant is very poor and very low paid servant and belongs to minority community and backward class.

(iv) Any other suitable relief may please be granted."

3. The respondents have filed reply. They have stated that the applicant was appointed purely on provisional and adhoc basis and his appointment was liable to be terminated at any time without giving

reasons or without iss. y notice. As the applicant had accepted these conditions, he can not challenge the termination. The contention of the respondents is that as the applicant's appointment was purely provisional and on adhoc basis, it was not necessary to follow statutory provisions of I.D. Act. They have stated that Shri Sarvaiya who was selected in applicant's place, was fully qualified. They have stated that Shri Sarvaiya has passed 10th Standard but the applicant had passed only 9th standard. Because of certain lacuna in his recruitment, de novo procedure for recruitment was ordered in November 1991.

4. The applicant has filed rejoinder. He denied that he was appointed on provisional and adhoc basis. He has reiterated that he worked for 507 days without any break. He was appointed on a regular post. He has repeated the allegation that he was terminated in order to accomodate the brother of the A.S.P. He has stated that he has sent the appeal to SSP Bhavnagar under Certificate of Posting and produced xerox copies. He has stated that he is fully qualified to hold the post of EDDA. He was registered ~~his name~~ in Employment Exchange. The respondents have given further reply to the rejoinder.

They have st[illegible] even though the post of D[illegible] vacant, the a[illegible] was appointed due to urgency procedural formalities took time for getting the post filled on regular basis and in order to carry on the work, the applicant was appointed on adhoc basis. They have stated that the applicant is not a resident of the village, but he is resident of Songadh.

They have denied that the applicant gave any appeal. In view of the above, the respondents have prayed for rejection of the applicant's Original Application. The applicant has given further rejoinder. He has repeated that he was appointed against the regular vacant post. The appointment of Shri Sarvaiya in place of the applicant was irregular and illegal. The applicant has claimed that he is resident of Sihor.

5. During the arguments Mr. K.C. Bhatt, learned advocate for the applicant stressed on the point that in view of the very judgment of this Bench the Postal Department is treated as Industry and the Industrial Disputes Act applies to them. Hence the termination of the services of the applicant without following legal procedure under the statute, was illegal as the applicant had completed 507 days of continuous service as EDDA. Mr. Akil Kureshi, on behalf of the respondents, pointed

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out that the appointment of the applicant was on [illegible] and temporary basis and liable to be terminated at any time. He also produced copy of appointment letter dated 3.1.1990 regulating the period of appointment to 90 days. He also pointed out that the judgment of the High Court of Punjab & Haryana in Civil Writ Petition No. 7897 of 22nd July, 1983 stating that the P & T Department is not an Industry and hence provisions of the I.D. Act could not apply to this case.

6. It is seen that the respondents have not denied the fact that the applicant had worked for 507 days before his services were terminated. In the first order, Ann.A-1 there was no period specified by the respondents and in the order dated 3-1-90 produced by Mr. Akil Kureshi during the hearing, it is specified that the appointment will be for 90 days or until the regular appointment is made whichever period is shorter. In this context Mr. K.C. Bhatt, learned advocate for the applicant objected to the production of this document at the hearing stage and alleged that it was an after thought as this document was not produced along with the written statement. Even assuming that this letter was issued the period of 90 days expired on 2-4-90 but still the applicant was continued in service upto 26-4-91 without further order.

..... 7/-

Hence it is not possible to accept the contention the appointment was made for fixed period.

7. It is undisputed fact that the applicant had completed 507 days and hence statutory procedure under I.D.Act like notice and retrenchment compensation should have been followed, as he had completed more than 240 days in the year prior to retrenchment. This was not done in this case and this is a clear violation of the I.D.Act provisions. The respondents have also not taken the argument of P & T Department not being Industry in the written statement. Only during argument Mr. Akil Kureshi pointed out that P & T Department could not be treated as Industry and referred to the decision of the Punjab & Haryana High Court's decision in Civil Writ Petition No. 7897 of 22nd July, 1983. This Bench of the Tribunal has all along been holding that the P & T Department is an Industry and hence subject to the statutory provision of the I.D.Act. It has been decided for example, O.A.No.278/89 decided on 1.10.1991 that the provisions of the I.D.Act would apply to an EDA as he would be a workman as defined in I.D.Act. It has also been decided in the case of R.Padmanabhan Nair V/s. Superintendent of Post Offices, 1993 SLR, CAT Ernakulam Bench, page 610, that even a substitute who was allowed to work in the post office continuously for a long time,

is a workman under the I.D.Act and an action has to be taken as per the provisions of the Act. It is settled law that P & T Department is an industry. Calcutta Bench of Central Admn. Tribunal in Ashok Kumar Sinha Vs. Union of India & others 1989 Lab.I.C. 670 took this view and it was based on the decision of Kerala High Court in Kunjan Bhaskaran and Others Vs. Sub Divisional Officer Telegraphs. Changanessary and Others, 1983 Lab. I.C.135. Ahmedabad Bench of Central Admn.Tribunal also took the same view in M.A.Bukhari Vs. Union of India and Others AIR 1989 (1) CAT 162. It is clear that P & T is an industry and the applicant who was a Extra Departmental Agent - , was a workman. As the applicant has completed more than 240 days in a year prior to his termination, the respondents could not terminate his service without following the provisions of the I.D.Act as it would amount to retrenchment. If the respondents did not want to allow continue the applicant by giving him regular appointment as EDDA, they were entitled to retrench the applicant, but that could be done by following the provisions of Section 25 F of the I.D.Act. In this view of the matter, we hold that the action of the respondents in terminating the services of the applicant was bad in law and it has to be quashed and the applicant is entitled to reinstatement in service as EDDA. Hence, we pass the following order ;

ORDER

The application is allowed. The order

of the ASPO Bhavnagar dated 23.4.1991 be quashed and set aside. The respondents are directed to reinstate the applicant in service within one month from the date of receipt of this judgment with full backwages. It must be paid within four months from the date of the receipt of this order. The respondents may terminate the services of the applicant, if they so desire, as per the provisions of Industrial Disputes Act. The application is disposed of accordingly. No order as to costs.

Sd/-

(Dr.P.K.Saxena)
Member (J)

Sd/-

(V.Radhakrishnan)
Member (A).

Pronounced by : KCB Gupta 7.6.94

Copy of the order

True COPY

*VTC
XXXX

Recd.
27-6-94.

Ms- Arek Kureshi

Annex- B 117

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

M.A./396/94 in O.A./92/92

26.7.1994

Heard the learned counsel for the parties. M.A./396/94 for extension of time allowed. Time extended till 30.8.1994. M.A. stands disposed of accordingly.

Sd/-
(Dr.R.K. Saxena)
Member (J)

Sd/-
(K. Ramamoorthy)
Member (A)

*K

Prepared by : KaBhatt 28/7/94
Compared by :
TRUE COPY

CBhatt
Section Officer (J),
Central Administrative Tribunal
Ahmedabad Bench

प्रधान खण्डपीठ जोधपुर
जोधपुर मण्डल
जोधपुर - 364001
- 8 AUG 1994
प्राप्त किया
RECEIVED

Mr. Akil Kureshi

Annex - C.

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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

RECEIVED

M.A./494/94 in O.A./92/92

5.10.1994 Heard Mr. K.C. Bhatt and Mr. Akil Kureshi. M.A./494/94 for extension of time allowed. M.A. No.494/94, stands disposed of.

Sd/-
(Dr.R.K.Saxena)
Member (J)

Sd/-
(K.Ramamoorthy)
Member (A)

*K

Prepared by : 7/10/94
Compared by :

TRUE COPY

Section Officer (J)
Central Administrative Tribunal
Ahmedabad Bench

Recd
01/11/94.