

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 1046/96

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman.
Hon'ble Mr. B.P. Singh, Administrative Member.

Kavilash Ram, son of late Fekuram,
r/o 46/M/20, Canal East Road,
Calcutta-700 011 working as Casual Labour
under S.D.P.O. (Cal).

...Applicant.

- v e r s u s -

1. Union of India, through the Secretary,
Ministry of Law, Post & Telegraph
Department, New Delhi.
2. Asstt. Vigilance Officer,
North Calcutta, Telephone Bhawan,
Calcutta-1.
3. Vigilance Officer,
Calcutta Telephones, Telephone Bhawan,
Calcutta-1.
4. S.D.P.O. (Telephones)
Calcutta Telephone Authority,
58, Raja Dinendra Street, Calcutta.
5. Officer-in-Charge,
Narkeldanga Police Station,
Narkeldanga Main Road, Calcutta-2.
6. Mr. Chutmutia alias Dhanraj
son of Alpu, 12, Gobinda Khatick Road,
P.S. Tangra, Calcutta-15.
7. Ram Sarup Rama (Mistri)
son of Sheku Ram, residing at 246/H/12, Canal East
Road, Calcutta-700 011.

...Respondents.

For the applicant : Mr. D. Basu, counsel.
For the respondents: Mr. S.K. Dutta, counsel.

Heard on 7.4.99 & 13.5.99

Order on 27.5.99

O R D E R

B.P. Singh, AM.

In this O.A. the applicant has requested the relief that the applicant should be given appropriate appointment for appropriate work under S.D.O.P.(Beliaghata), Calcutta Telephones and as an interim prayer he has requested for issuing injunction restraining the respondents from allowing the respondent No.6 to continue his work any further in place

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of the applicant and allowing applicant to work.

2. The fact of the case in brief is that the applicant was appointed as a casual worker by the Calcutta Telephones on 21.4.82 and he worked as such upto 12.6.82 as per Annexure-A. Some time in the year 1982, the elder brother of the applicant Sri Ram Sarup Ram (Mistri) who was also working under the respondents took away the relevant documents, including certificate, ration card in the name of the applicant on the plea to produce the same to the department which was reported by him to be preparing a panel of casual worker for permanent employment. The applicant made enquiries from the respondents as well as from his brother in this respect subsequently. His brother every time ^{gave} ~~gives~~ assurance that his name has been included in the panel and his papers have been submitted in the office. In this way, three years passed. The applicant continued to believe his brother that he has been empanelled for regular appointment. He came to know after sometime thereafter that one Sri Chutmutia, son of Alpu of Tangra, Calcutta, respondent No. 6 who is brother-in-law of Ram Sarup Ram, respondent No. 7 was working in the place of the applicant by impersonating the applicant and has been availing of the service benefits for the last three to four years. The applicant made a representation on 19.4.91 to the S.D.O.P, respondent No.4 about the above facts and also about the assault on him by Shri Chutmutia and some other unknown persons and a police case was started. He has also requested respondent Nos. 2, 3 and 4 to hold an enquiry regarding the above allegations. A copy of the complaint (Annexure-B) was also sent to the Vigilance Officer. The applicant met the Assistant Vigilance Officer and was interrogated by him in reference to Annexure-C on August 21, 1991. On enquiry about the fate of completion the enquiry, the applicant and his advocate were informed by the Assistant Vigilance Officer that the matter has been forwarded to the CBI for further enquiry. Whenever the applicant made enquiries about the progress of the case he was accordingly informed time and again but no development in the case was intimated to him. Due to this evasive and dilatory action of the respondents the applicant

was deprived from getting his legitimate grievance redressed and respondent No.6 Sri Chutmutia continued to work by impersonating the applicant.

3. Being aggrieved and dissatisfied with the purported action of the respondents the applicant moved an application under Art. 226 of the Constitution of India before Hon'ble High Court at Calcutta (Annexure-E) which was disposed of on 19.2.96 by their Lordship (Vide annexure-G) by directing the applicant to make an application before the Hon'ble Tribunal in the matter. Accordingly this application has been filed before the Hon'ble Tribunal.

4. We have heard the Id. counsels of both the parties in the case. We have also gone through the application as well as reply, counter reply etc. in the case as well as supplementary affidavit.

5. Ld. counsel Mr. Basu appearing on behalf of the applicant has stressed that the brother of the applicant i.e. respondent No.7 was working under the respondent No.3. After the panel was prepared and the applicant's name appeared in the panel respondent No.7 took all the relevant documents including the certificate and ration card of the applicant on the plea that he same are required to be produced before the concerned authorities to ensure his regular service. These documents were taken by the respondent No.7 by deception and were used to arrange employment of respondent No.6 by impersonating as applicant. The respondent No.7 was able to play this ploy which continued for a few years. When the applicant came to know about this he complained to the respondent No.3 on which Vigilance enquiry followed by CBI enquiry was started. The Vigilance Officer, Calcutta (Telephones) submitted his report dated 24.1.94 before the Hon'ble High Court at Calcutta through Chief General Manager, Calcutta (Telephones). The Vigilance Officer concluded in his report that the applicant Sri Kavilash Ram is a bonafide person who should have been appointed to the post of daily rated Mazdoor under the Calcutta Telephones instead of Sri Chutmutia who impersonated as Kavilash Ram on the basis of service and documents of actual Kavilash Ram which were taken deceptively by respondent No.7. After the vigilance enquiry the services of the impersonated Kavilash Ram i.e.

actual Sri Chutmutia were terminated and he was removed from the strength of daily rated Mazdoor w.e.f. 1.12.93. Since the name of the applicant appeared in the panel prepared by the respondents and Sri Chutmutia respondent No.6 worked as daily rated mazdoor impersonating himself as Kavilash Ram, the applicant is entitled to get appointment on the post once the fraud has been duly established after due enquiry by the Vigilance Officer of the respondent No.3.

6. Ld. counsel of the respondents has affirmed the enquiry made in the complaint about impersonation and the final outcome of the enquiry report. The respondent No.6 was removed as soon as it was established that he is impersonating the actual Kavilash Ram. For the period he worked as such on the post he earned the wages. The department took justified action after proper enquiry by the CBI. The applicant worked for a brief period from 21.4.82 to 12.6.82 as daily labour in Calcutta (Telephones) and such casual engagement for a brief spell does not confer upon him any right of further engagement/regular appointment in Calcutta Telephones.

7. Ld. counsel of the applicant in his counter reply has again pressed his pleas that the applicant was entitled for appointment to the post of regular labour (class-IV) in place of Sri Chutmutia the vacancy of which was caused due to removal of Shri Chutmutia and which should have been filled up actually by him. Since the impersonated persons has been removed from the post of regular labourers, the post thus becoming vacant should go to the applicant and the applicant is entitled for the same. He has further argued that if impersonation would have been avoided by the department on proper scrutiny the same would not have happened and the applicant would have been appointed right in the beginning when Sri Chutmutia impersonating the applicant was appointed. Had this been done by the respondents the appointment of the applicant by now could have become permanent and, therefore, the applicant is fully entitled for appropriate appointment under the respondents.

8. The main question which has emerged out of the above discussion is whether the applicant is entitled to be appointed on the post which respondent No.6 occupied by impersonating the applicant. No doubt the

respondent No.6 got appointment not on the strength of his own candidature but on the strength of the assumed candidature of the applicant by impersonation. If there would not have been impersonation the applicant would have been appointed on the post and would have continued according to the extant rule of the department. Since mischief was played against the applicant by the respondent No.6 in collusion with respondent No.7, the respondent No. 6 reaped the fruits of an illegal act which was later on detected and set right by removing him from the post. This being the position, the case of the applicant calls for due consideration. He has been a victim of circumstances for having over confidence in the intentions of his elder brother the respondent No. 7 when he gave his certificates and other original documents to his brother (respondent No.7) for the purpose of empanelment. No doubt, the applicant has worked for a brief spell w.e.f. 21.4.82 to 12.6.82 as daily labour under Calcutta Telephones but the same spell has given employment to respondent No. 6 by impersonating the applicant. Therefore, the plea of his small spell of duty does not appear to hold good, because it has already given employment to the impersonator. The plea of the respondents that impersonator worked from 8.7.87 onward till he was removed w.e.f. from 1.12.93 and he was paid wages for the period, therefore, the applicant is not entitled for any right for appropriate appointment under the respondents does not convince the reason. When an impersonator can reap the benefits of impersonation on the basis of short term engagement from 21.4.82 to 12.6.82, how the actual person viz. the applicant cannot get the same benefits on the strength of the same brief spell of engagement. We find that there is a strong case in favour of the applicant for consideration of his case for appropriate appointment under the respondents if he is otherwise found suitable and eligible under the extant rules.

9. In view of the above discussion, we are of the view that the respondents should consider the case of the applicant for appropriate employment if the applicant is otherwise suitable/eligible for the same. We accordingly allow the application and direct the respondents to take