

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 378/2000

MONDAY, THIS THE 9th DAY OF SEPTEMBER, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Dilip Kumar P.M. S/o late Madhavan
Extra Departmental Mail Man
HRO, RMS Ek Division, Cochin-682 028
residing at Blayithara House
Vennala P.O.
Cochin-682 028.

Applicant

By Advocate Mr. O. V. Radhakrishnan

Vs.

1. Head Record Officer
RMS Ek Division,
Cochin-682 016
2. Senior Superintendnetn of Railway Mail Service,
RMS Ek Division
Cochin-682 018
3. Chief Postmaster General
Kerala Circle
Thiruvananthapuram;.
4. Member (D)
Postal Services Board
Dak Bhavan
New Delhi.
5. Union of India
represented by its Secretary
Ministry of Communications
New Delhi.

Respondents

By Advocate Ms S. Chitra, ACGSC

The Application having benn heard on 17.7.2002 this Tribunal delivered the following on 9.9.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This Original Application has been filed by the applicant aggrieved by A8 memorandum dated 8.4.2002 and A-9 letter dated 31.7.97. The applicant sought the following reliefs through this OA.

(i) to call for the records relating to Annexure A-8 and Annexure A-9 and to set aside the same



(ii) to issue appropriate direction or order directing the respondents to permit the applicant to continue in service without regard to Annexure A-8.

(iii) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the cases

and

(v) to award costs to the applicant.

2. According to the averment of the applicant in the O.A. he while working as Mazdoor in the Head Record Office, Railway Mail Service EK Division, applied for regular appointment to the post of Extra Departmental Mail Man at Head Record Office, Ernakulam in response to first respondent's A1 notification dated 1.3.2000 inviting applications. He appeared before the first respondent pursuant to A2 memo dated 25.3.2000. He was informed by the first respondent that he had been provisionally selected for appointment to the post of ED Mail Man, Head Record Office, Ernakulam. He reported before the first respondent on 30.3.2000 and he was served with A4 office order dated 30.3.2000 w.e.f. 30.3.2000 forenoon. According to him the Divisional Secretaries of R3, R4 and Extra departmental Unions of National Federation of Postal Employees (NFPE) raised objection against selection and appointment of the applicant demanding the departmental authorities for making selection to the post of ED Mail Man on the basis of inter-se seniority of Mazdoors working in the RMS EK division and as the respondents did not yield to their threats and illegal demands the Divisional Secretaries resorted to indefinite hunger strike before the RMS office on and from 4.4.2000. Union officials were called for discussions on 6.4.2000 by the authorities but were not fruitful. Union officials started sitting strike from 6 am on 7.4.2000. The sitting strike was called off on 8.4.2000 on the assurance given by the higher ups that the service of the applicant would be terminated immediately. Applicant obtained a copy of A-8



memo dated 8.4.2000 issued by the 1st respondent terminating his service. Applicant referred to A-9 letter dated 13.11.97 issued by the Directorate prescribing the procedure for revising the administrative orders of the subordinate authorities for good and sufficient reasons and submitted that as A-9 had not been issued by way of amendment to Rule 16 of the Extra Departmental Agents (Conduct and Service) Rules and Rule 16 could not be amended or varied by administrative instructions as contained in A-9. A-9 therefore conflicted with Rule 16 and was therefore invalid and inoperative. Further A-9 could be exercised by an authority next higher than the appointing authority and that too in regard to appointment which was made in contravention of executive or administrative instructions. Hence A-8 and A9 were ultravires, incompetent and inoperative. Thus aggrieved he filed the OA seeking the above reliefs.

3. Respondents filed reply statement resisting the claim of the applicant in which applicant's factual narration regarding the sequence of events was not disputed. They submitted that the issue was taken with the third respondent by the union and as per direction of the third respondent the selection of ED Mail Man was kept in abeyance pending clarification from the Directorate and the orders were conveyed to the Post Master General, Central Region by R-2(4) dated 7.4.2000 and accordingly the second respondent issued R-2(5) to the first respondent who in turn issued A-8. It was submitted that in A4 appointment order it was mentioned that the appointment was purely temporary and liable to be terminated at any time without notice or assigning any reason thereof. In order to give effect to R5 directions respondent No. 1 had invoked the contractual provisions of the appointment order of A4. They submitted that the basic legal

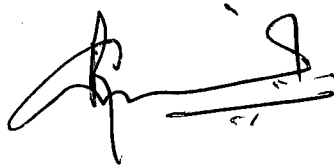


question to be considered in the present OA was whether appointment to ED Mailman cadre was to be made by the appointing authority following prescribed procedure laid down in the rules governing ED Recruitment issued by the Director General. Posts and the question whether it is to be filled up by seniority was now a matter under the clarification jurisdiction of the Postal Directorate. They prayed for vacation of interim order and dismissal of the OA in the larger interest of the respondents and in public interest.

4. In the additional reply statement respondents submitted that the Director General by R3(1) dated 23.6.2000 clarified the point raised by the third respondent that there was logic in the demand made by the local Unions relating to recruitment of eligible casuals/part-time casuals in Group-D Posts being made strictly on the basis of seniority, reckoned with reference to the date of appointment as approved casuals/part-time casuals subject to the condition that they possessed the minimum essential qualification of VIII standard pass and that the marks obtained in the qualifying examination or the recruitment being confined to the casual/part-time casuals possessing preferential qualification of Matriculation pass would not be the criterion nor would there be recruitment test to assess the merit except verification of certificates/documents, etc.

5. Applicant filed rejoinder.

6. Heard learned counsel for the parties.

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7. We have given our anxious consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

8. We find that in this case the respondents do not dispute that they had issued A8 to enable a situation which developed as a result of the selection of the applicant as ED Mailman pursuant to A1 notification. A-8 notification had been issued on 8.4.2000 by the first respondent. According to the applicant he had not received A8. This OA was filed on 10.4.2000. This Tribunal admitted the O.A. on 10.4.2000 and an interim order of status quo as on that date regarding posting of the applicant as ED Mailman till next ^{of hearing} date/was passed. On 24.2.2000 the interim order was extended until further orders.

9. Applicant is aggrieved by A8 order as also A-9 orders. On going through the OA it would appear that the applicant was under the impression that respondents would rely on A9 order in support of the action taken by them. We find from the reply statement that respondents have not referred to A9 in support of the action taken by them. The learned counsel for the applicant assailed A8 on the ground that A8 had been passed without affording an opportunity of being heard. We are of the view that this ground has no validity at this stage because of the interim order of the Tribunal at the time of admission of the O.A.

10. In addition, we hold even on merit the question of notice would not arise. A8 impugned order reads as under:

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Department of Posts, India
Office of the Head Record Office
RMS EK Division
Kochi-682 016

No.HRO/EDMM/Rectt. dated at Cochin-16, 8.4.2000

As per the orders of Chief Postmaster General, Kerala Circle, Thiruvananthapuram, conveyed through Postmaster General, Central Region, Cochin, the selection of Shri P.M. Dilipkumar, former mazdoor, Blayithara House, Vennala P.O. Cochin 682 028 as Extra Departmental Mail Man, as ordered in this Office Memo. No. HRO/EDMM/Rectt dated 30.3.2000 is kept in abeyance, pending clarification from the Directorate.

Accordingly the services of Shri P.M. Dilipkumar are hereby terminated.

A copy of this memo is issued to:-

- 1.Shri P.M.Dilipkumar, EDMM
- 2.P/F of Shri Dilipkumar
- 3.HRO accounts, EK Dn.
4. SSRM EK Division
- 5.File
- 6.Spare

Sd/- K.M. Mathai
Head Record Officer

It is clear from the above that the selection of the applicant has been kept in abeyance. We find from the pleadings the circumstances under which A8 had to be issued. We find R2(1) that the Union took up the issue of appointment of the applicant as ED Mailman with the second respondent. From R2(1) their case was that the selection of the applicant was in violation of DG(P)'s letter dated 6.6.88. According to them action of the first respondent was against the good intention of the Department and was also against the interest of the casual employees. The Union also took up the issue with the PMG. The second respondent conducted a review on the selection made by the first respondent based on the complaint received from the Union and he found that the selection made by the Head Record Officer - the first respondent was strictly in accordance with the rules and procedures on the subject. On that basis R2 reply dated 5.4.2000 was sent to the Union. It is seen that the Union



started an indefinite hunger strike in front of Ernakulam RMS at the platform entrance in the afternoon of 4.4.2000. It is also seen that the Union took up the issue with the third respondent. The third respondent after consulting Member (D) in the Directorate the 4th respondent herein by R2(4) letter directed PMG(Central Region) to keep the selection in abeyance Pursuant to R-2(4) letter, the first respondent issued A-8 letter. According to the respondents A8 letter had been issued invoking the provisions of A4. A4 appointment letter dated 30.3.2000 issued to the applicant reads as under:

Department of Posts, India
Office of the Head Record Officer
RMS EK Division
Kochi-682 016

No.HRO/EDMM/Rectt. dated at Cochin-16, 30.3.2000

Shri P.M.Dilipkumar, Mazdoor, Blayithara House,Vennala P.O. Cochin -682 028, selected for the post of Extra Departmental Agent is temporarily appointed as Extra Departmental Mail Man with effect from 30.3.2000 forenoon with a quantum of work of 5 hours a day in the scale of pay 1545-25-2020 plus usual allowances admissible from time to time, in the vacancy caused due to the retirement of Sri N. K. Sukumaran, Extra Departmental Mail Man, Head Record Office, Cochin-16.

The conduct and service of the candidate will be governed by the P&T Extra Departmental Agents (Conduct and Service) rules 1964.

The candidate is distinctly made to understand that his appointment is purely provisional and temporary and liable to be terminated at anytime without notice or assigning any reason therefor.

Sri P.M. Dilipkumar has been declared medically fit.

A copy of this memo is issued to:

1. Candidate
2. PF
- etc.etc.

Sd/- R. Sadasivan Nair
Head Record Officer
RMS EK Division
Kochi-682 016



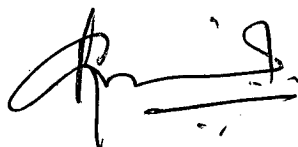
We find from the penultimate para of the above letter that the first respondent could terminate the appointment at any time without assigning any reason.

11. The position that emerges in this case is that when the applicant was selected as ED Mail Man by the first respondent the Union took up the matter with the authorities first at the local and later at the Circle level, as they felt the selection which was done pursuant to A1 notification which was in turn done in implementation of A-6 direction of the Director General Posts was against the objectives laid down therein and against the previous practice. When they found that the authorities were not yielding to their demand they resorted to direct action. The third respondent thereupon consulted the Member (D) at the Postal Directorate. Member (D) at the Postal Directorate prima facie felt that there was substance in the demand of the Union and directed the third respondent to keep in abeyance the whole selection pending clarification by the Directorate. It is pursuant to the said direction that A8 had been issued by the first respondent. First respondent was performing an administrative action when he issued A1 notification and conducted the selection resulting xxxxxxxxxxxx in the appointment of the applicant as ED Mailman. The second, third and fourth respondents exercised supervisory powers on the administrative action taken by him when a situation developed which resulted in that the union resorted to direct action. If in exercise of such supervisory powers they issue any instruction, first respondent was bound to implement the same. In this case we find that he had done so in accordance with the term of A4 appointment order issued to the applicant. In such a situation we are of the view that when the applicant had accepted A4 and joined duty, he could not



plead that he would accept that part of A4 appointing him as ED Mailman and not accept that part which laid down that the appointment was purely provisional and temporary and was liable to be terminated without notice or assigning any reason. Moreover, we are also of the view that in this case the authorities had only issued an order keeping in abeyance the selection in question that too within ten days of the appointment of the applicant on 30.3.2000. The selection could be kept in abeyance only if the selected candidate the applicant herein was put back to the position obtaining prior to the selection. That was what had been done here by A8. The authorities had to consider the interest of a single individual on the one hand and the indefinite hunger strike of the Union on the other. The indefinite hunger strike will affect the functioning of the Department and in turn the service being given by them to the public. In such a situation if the authorities felt that individual interest should give way to public interest and issued A-8, the same could not be faulted. In fact we feel that had they not acted in such a situation, they would have failed in their duty as public servants.

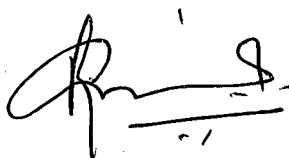
12. We also find that in this case, the result of the selection was published on 30.3.2000 and the union took up the issue immediately thereafter on 3.4.2000 and A5 order was issued on 8.4.2000. In such a situation it cannot be stated that any vested right had accrued to the applicant. Further we are of the view that it is not for any fault of the applicant that the temporary restraint order had been issued. It is in the role of an arbitrator of a dispute between a trade union representing the collective workers and a section of the lower management that the fourth and third respondents had acted. In such a situation, the temporary restraint

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orders on the subordinate authorities' action by the superior authorities in this case the third and fourth respondents cannot be faulted on the ground of non-affording of opportunity.

13. According to the applicant A8 order had been issued by the first respondent as ordered and dictated by the 3rd respondent. We find that the respondents had not denied the same. They had explained as to why the same had to be done. As already held by us, in a hierarchial functioning, the subordinate authority is duty bound to carry out the instruction/directions of his superiors. So this ground has no force. Moreover, even when the respondents had produced the third respondents R-2(4) letter dated 7.4.2000, and the second respondent's R-2(5) letter the applicant had chosen not to assail them. In our view as long as R-2(4) and R-2(5) stand the first respondent had to implement the same. As is evident from A-8 the same was as a result of R2(4) and R2(5). Moreover, it could not be that just because an authority delegated with a power to do certain things had done in a particular way the same could not be kept in abeyance by any superior authority in the Government pending examination.

14. The next ground urged was that A8 order had been issued without showing that the selection and appointment of the applicant was made in contravention of any rule or binding instruction. What we find is that the Member (D) felt that there is substance in the Union's complaint about the selection. On considering A6 and the contents of R2(1) and R2(2) we are of the view that the Member (D)'s conclusion could not be faulted because he being in the Directorate would know what was the intention of issuing A-6. In any case Member (D)'s decision as contained in R2(4) is not

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impugned herein. As long as R-2(4) stands R2(5) stands and hence A8 could not be faulted. In A8 the reason for issuing the same had been included. The reason is in R2(4). As already held above, R2(4) is not under challenge. So it cannot be said that A8 is non-speaking. It is not necessary that A8 should contain the reasons for the Member's decision because it is only an order to keep in abeyance till clarification is received. Hence this ground fails.

15. According to the applicant A-9 is against Rule 16 of the Extra Departmental Agents (Conduct and Service) Rules and hence A-9 was ultra vires, unauthorised and inoperative. It was further urged that even under A-9 only the next higher authority could do the review and not any of the higher authorities. According to the learned counsel for the applicant, in this case as the second respondent had done the review and that authority had found that the selection was done in accordance with the rules, the third respondent was not competent to exercise the revisional powers in the matter of selection and appointment under Rule 16 or under A-9. We have considered the contents of A-9. We find that the same had been issued to empower the authorities higher than the appointing authority to revise the administrative orders of the subordinate authorities. We do not find any infirmity in the same. The ground urged that the same is in conflict with Rule 16 has no force. Rule 16 is regarding the power of revision of the orders passed by the subordinate authorities in disciplinary matters i.e. in those cases the authorities are exercising powers of a quasi judicial nature. As against the same A-9 is regarding the review of administrative orders issued by the subordinate authorities. Therefore we hold that the ground that A-9 was in conflict with Rule 16 and hence A-9 was liable to be quashed is only to be rejected and



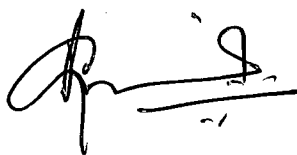
we do so. We are also unable to accept the proposition of the learned counsel for the applicant that only the next higher authority could exercise the power of review and none other. In this particular case as held by us there was a conflict about the implementation of the instructions contained in A-6. In our view in such cases, in the respondents organisation the authority who issued A-6 will be the final authority to say regarding the correctness or otherwise of its implementation - in this case the Member (D) of the Directorate. Otherwise different subordinate authorities could give different interpretations. Hence we hold that the challenge against A-9 on this ground fails.

16. As regards the learned counsel for the applicant's submissions that in accordance with the ratio of the judgment in Basudeo Tiwari Vs. Sido Kanhu University and Others (1998(8) SCC 194) in order to arrive at a conclusion that an appointment was contrary to the provisions of the Act, statutes, rules or regulations, etc. a finding has to be recorded and unless such a finding was recorded the termination could not be made and to arrive at such a conclusion necessarily an enquiry should have been made as to whether such appointment had been made contrary to the provisions of the Act/instructions and in this case such exercise was absent the condition precedent stood unfulfilled we are of the view that the said judgment has no applicability in the facts of the case in view of the fact that in this particular case as already held by us to avoid a situation respondents 3 and 4 had taken a decision to keep in abeyance the selection and this was not a final decision of termination. An administrative decision taken to tackle a particular situation in public interest could not be termed as arbitrary.



17. The next ground advanced by the applicant was that Annexure A-8 could not be justified under Rule 16 of the P&T Extra Departmental Agents (Conduct and Service) Rules 1964 in the light of the ruling of the Hon'ble High Court of Kerala in Post Master Vs. Usha (1987 (2) KLT 705). He submitted that the Hon'ble High Court held that the termination of service on any administrative ground contemplated by rule 6 was a ground or reason that arose after the appointment and on grounds that had arisen before or in regard to the appointment, termination could not be done under Rule 6. The respondents have not pleaded that they had taken action under Rule 6. They have taken action under the provisions contained in the appointment letter of the applicant. Therefore, we hold that this ground ~~xxxxxxxxxxxx~~ has no force.

18. Applicant referred to A5 letter dated 12.3.93 and submitted that the qualification prescribed for Extra Departmental Mailman was VIIth standard and preference may be given to candidates with Matriculation. He submitted that Director General (Posts) by A6 letter dated 6.6.98 had issued instructions ordering that Casual Labourers who were full time or part-time and who were willing to be appointed to ED posts, would be given preference for recruitment to ED posts, provided they fulfilled the prescribed educational qualifications and had put in a minimum service of one year. According to him in the light of A6, Casual Mazdoors were entitled for preference over outsiders in the matter of selection and appointment to the posts of Extra Departmental Agents. Therefore, the selection was confined to Mazdoors working in the Department and among the Mazdoors who applied for the post, the applicant was selected on the basis of his suitability and merit as reflected in the SSLC examination.



He also referred to this Tribunal's order in O.A. 367/98. According to him in the said order this Tribunal upheld the action of the respondents in selecting the candidate who secured the highest marks in SSLC examination. We find that the respondents had not given any remarks on this point in their reply statement. According to them the basic legal question that fell to be considered was whether the post was to be filled only by seniority and the same was under the clarificatory jurisdiction of the Postal Directorate. When the said matter was under clarification, pending such clarification when A8 order has been issued the same could not be faulted. We have carefully considered the rival submissions and the contents of A5 and A6. In A5 letter dated 12.3.93 the minimum educational qualifications for EDDA and ED Stamp Vendor and other categories of ED Agents had been prescribed as VIII standard. It had also been stated that preference should be given to candidates with Matriculation qualification and no weightage should be given for qualification higher than Matriculation. A6 letter dated 6.6.1988 referred to by the applicant reads as under:

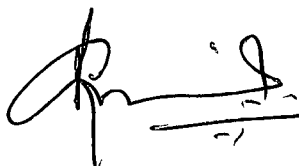
DG, Posts Letter No. 17-141/88-EDC & Trg. dated the 6th June, 1988.)

Preference to casual labourers in the matter of appointment as ED Agents:-

According to the prevalent Recruitment Rules governing the cadre of Group-D, the order of preference among various segments of eligible employees is as under:-

- (a) Non-test category
- (b) ED employees
- (c) Casual Labourers
- (d) Part-time Casual labourers.

2. Since the number of vacancies of Group-D is limited and the number of ED employees eligible for recruitment as Group-D is comparatively large, the casual labourers and part-time casual labourers hardly get and chance of their being absorbed as



Group-D. Thus majority of casual labourers with long service are left out without any prospect of their getting absorbed in Group-D Cadre.

3. Keeping the above in view, a suggestion has been put forth that casual labourers, both full and part-time should be given preference for recruitment as Extra Departmental Agents, in case they are willing, with a view to afford the casual labourers a chance for ultimate absorption as Group-D.

4. The suggestion has been examined in detail and it has been decided that casual labourers, whether full-time or part-time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED posts, provided they fulfil all the conditions and have put in a minimum service of one year. For this purpose, a service of 240 days in a year may be reckoned as one year's service. It should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange.

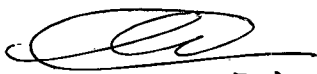
Admittedly the applicant and other Casual Mazdoors had been considered pursuant to A6. On a careful consideration of the contents of A6 as reproduced above we have no hesitation in holding that the above directions and instructions had been issued by the Postal Directorate so as to enable the senior Casual Labourers and part-time Casual Labourers who fulfil the eligibility conditions to become Extra Departmental Agents so that, in turn, they could become regular Group-D employees. There is no indication in the above letter that from amongst the Casual Labourers and part-time Casual Labourers there should be any selection. The only requirement was they should have put in a minimum service of one year. No material had been produced before us to show that the above letter had been modified or superseded. In the light of the position we are of the view that if the applicant had superseded his seniors the same is not in line with A6.




19. We find that the order of this Tribunal in O.A. 367/98 dated 23.11.2000 relied on by the applicant does not pertain to casual mazdoors. In that OA the applicant is one Sri K.S. George, retired Deputy Controller and the dispute was regarding withheld amount of gratuity. As already held by us when the selection of E.D. Agents is from Casual Labourers and Part-time Casual Labourers the objective contained in A6 has to be kept in view. In A6 there is no stipulation that a selection from amongst them should be conducted. All those who fulfil the conditions are eligible for preferential treatment and when everybody is entitled for preferential treatment, the only distinguishable character is length of service as Casual Labourer/Part-time Casual Labourer and hence the appointment as ED Agent from amongst Casual Labourers should be strictly in the order of seniority of all those who fulfil the eligibility conditions. Under the circumstances we find no force in this ground.

20. In the light of the detailed analysis given in the foregoing paragraphs we hold that the applicant is not entitled for the reliefs sought for. Accordingly we dismiss this OA with no order as to costs.

Dated the 9th September, 2002.



K. V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Appendix

Applicant's Annexures

- A1 True copy of the notification dated 1.3.2000 of the 1st respondent.
- A2 True copy of memo No. HRO/LED/Rectt/dated 23.3.2000 of the 1st respondent.
- A3 True copy of the Memo no. HRO/ED/Rectt/dated 28.3.2000 of the 1st respondent.
- A4 True copy of Order No. HRO/EDMM/Rectt dated 30.3.2000 of the 1st respondent.
- A5 True copy of the letter No. 17-366/91-ED& Trg dated 12.3.93 of the G.I. Department of Posts, New Delhi.
- A6 True copy of the Letter No. 17-141/88-EDC& Trg dated 6.6.88 of the Director of Posts, New Delhi.
- A7 True copy of the notice dated 5.4.2000 issued by the divisional Secretaries of R3, R4 and ED Unions with translation
- A8 True copy of Memo No. HRO/EDMM/REctt dated 8.4.2000 issued by the 1st respondent.
- A9 True copy of letter NO. 10-23/97-ED & Trg dated 13.11.97 of the LDGP, New Delhi circulated as per letter No. B3/ED/Ruling dated 19.12.97

Respondents Annexures

- R2(1) True copy of the letter dated 3.4.2000 of the Service Union
- R2(2) True copy of the letter No. R4/Corr/I/2000 dated 4.4.2000
- R2(3) True copy of the letter No. STL/40-10/86 dated 5.4.2000
- R2(4) True copy of the order of 3rd 4 respondent dated 7.4.2000
- R2(5) True copy of the communication dated 8.4.2000 sent to Respondent NO. 1