



CENTRAL ADMINISTRATIVE TRIBUNAL  
Circuit Bench, Lucknow  
Opp. Residency, Gandhi Bhawan, Lucknow  
\*\*\*\*\*

## INDEX SHEET

CAUSE TITLE

C. A 188 of 19/88

NAME OF THE PARTIES

Ram Kumar

Applicant

Versus

Union of India

Respondent

Part A, B & C

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3	Judgement	A <sub>6</sub> - A <sub>9</sub>
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(A1)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ADDITIONAL BENCH,**

23-A, Thornhill Road, Allahabad-211001

25/7/88

Removal

Registration No. 188 of 1988 (L)

APPLICANT (s) Ram Kumar

RESPONDENT(s) U.O. & others (Post office)

Particulars to be examined

Endorsement as to result of Examination

- |   |                                |
|---|--------------------------------|
| 1. Is the appeal competent ?  | yes.                           |
| 2. (a) Is the application in the prescribed form ?  | yes                            |
| (b) Is the application in paper book form ?   | yes                            |
| (c) Have six complete sets of the application been filed ?  | only two sets.                 |
| 3. (a) Is the appeal in time ?  | yes                            |
| (b) If not, by how many days it is beyond time ?  | -                              |
| (c) Has sufficient case for not making the application in time, been filed ?  | -                              |
| 4. Has the document of authorisation/Vakalat-nama been filed ?  | yes                            |
| 5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-  | yes DD 065149 dt. 6.10.88<br>5 |
| 6. Has the certified 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 by a Gazetted Officer and numbered accordingly ?      | yes Attested by Advocate.      |

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space ? *yes*
8. Has the index of documents been filed and paging done properly ? *yes*
9. Have the chronological details of representation made and the outcome of such representations 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 Tribunal ? *No.*
11. Are the application/duplicate copy/spare copies signed ? *yes*
12. Are extra copies of the application with Annexures filed ? *No.*
- (a) Identical with the original ? *—*
- (b) Defective ? *—*
- (c) Wanting in Annexures *—*
- Nos...../Pages Nos..... ?
13. Have file size envelopes bearing full addresses, of the respondents been filed ? *No.*
14. Are the given addresses, the registered addresses ? *yes*
15. Do the names of the parties stated in the copies tally with those indicated in the application ? *yes*
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? *—*
17. Are the facts of the case mentioned in item No. 6 of the application ? *yes*
- (a) Concise ? *yes*
- (b) Under distinct heads ? *yes*
- (c) Numbered consecutively ? *yes*
- (d) Typed in double space on one side of the paper ? *yes*
18. Have the particulars for interim order prayed for indicated with reasons ? *yes*
19. Whether all the remedies have been exhausted. *yes*

If approved may be listed before  
Court on 25.X.1988 *Behar* *24/10/88* *DR(J)* *S.O.(J)* *24/X/88*

(1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT LUCKNOW  
\*\*\*\*

O.A./T.A. No. 100 1980 (1)

Ram Kumar

Applicant(s)

Versus

U. O. - 2

Respondent(s)

Sr. No.

Date

Orders

(1)

25.10.80

Hon. D. S. Mishra, A.M.

Admit.

Issue notices | one month for C.A. & two weeks for R.A. There is also a prayer for interim relief. Issue notice to issue O.P. to file objection, if any, within three weeks on to why the interim relief be not granted. List this case for hearing on interim relief on 21.11.80

cdl-  
A.M.

Drish

OR

11/11

Notices for respondent Nos. 1 to 4 received by Sri V.K. Choudhry, Govt. Counsel. Fixing 21.11.80 hearing on interim relief.

Drish  
11/

(2)

21/11/80

No. Setting Adjournments 24.11.80 for order.

Drish  
21/11

(3)

24.11.80

Hon. D. S. Mishra, A.M.  
Hon. G. S. Sharma, J.M.

No reply to the show cause notice has been filed by the respondents. The respondent's counsel wants further time to file reply. The case is admitted for hearing. We have heard the learned counsel for the applicant regarding interim relief and we are not satisfied that there is any good justification for grant of the relief at this stage. The applicant can be suitably compensated finally if he succeeds. The prayer for interim relief is rejected. The respondents can file their reply within two weeks. ~~Dismissed~~ if any, may be filed within a week. This case for hearing on 25.11.80

AV

2

O.A. No. 188/88(L)

Hon' Mr. D.S. Mishra, A.M.  
Hon' Mr. D.K. Agarwal, J.M.

3

29/3/89

None is present for the applicant.  
Shri V.K. Chaudhary, learned counsel for the respondents states that his counter reply is ready and will be filed after serving a copy on the learned <sup>counsel for the</sup> applicant, as soon as, he is available to him. He is allowed to do so within a week. The applicant may file rejoinder, if any, within 2 weeks thereafter. List the case for final hearing on 1.5.89.

J.M.

A.M.

(ss)

OR  
Counsel for respondents has not filed any reply so far.  
Submitted for order  
30/4

Hon' Mr. Justice K. Nath, V.C.  
Hon' Mr. D.S. Misra, A.M.

6

1/5/89

Shri V.K. Chaudhary, learned counsel for the respondents files counter reply on behalf of them. The applicant may file rejoinder, if any within two weeks. List this case for final hearing on 19.5.89.

A.M.

V.C.

(sns)

OR  
The rejoinder has been filed by the learned counsel for the applicant. Submitted for order  
12/5

No sitting. Adjourned to 18/7/89 for final hearing.

7

19/5/89.

8

18.7.89.

No sitting. Adj. to 29.8.89 for hearing.

BCC

OR  
Rejoinder filed today  
12/5

BCC

3

14

0.90

No sitting Adj to 29.10.90

15

0.90

No sitting Adj to 17.12.90.

16

2.90

No sitting Adj to 11.1.91.

17

10

No sitting Adj to 19.2.91.

11

No sitting Adj to 14.3.91.

19

0.91

No sitting Adj to 7.5.91.

2

as the copy  
order and 7.5.91  
Signed  
(applicant)  
16.5.91

Received  
by  
v. Ke  
du/chr

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Registration O.A.No.188 of 1988(L)

Ram Kumar ..... Applicant

Versus

Union of India & Others..... Respondents

Hon.Mr.Justice U.C.Srivastava,V.C.

Hon. Mr. A.B.Gorthi, Member (A)

(By Hon.Mr.Justice U.C.Srivastava,V.C.)

The applicant working as a substitute ED Packer/ED Mail Peon has landed <sup>at</sup> to this Tribunal with a prayer that the respondents be directed to produce the order dated 28.9.88 in original and the same be quashed to the extent as it affects the applicant by putting to an end ~~of~~ the service of the applicant and they may also be directed not to dislodge the applicant from his post arbitrarily and illegally and for a further direction to the respondents to regularise the services of the applicant as he has already put in more than five years continuous service.

2. The applicant was first appointed as a substitute in the year 1981 and thereafter he worked with certain breaks and since 1983 he has been working continuously without any break. He was appointed as a Substitute for Shri Shiv Kumar as E.D. Packer/ED Mail Peon who was allowed to work as outsider class IV and Postman. The services of the applicant were put to an end in the



- 2 -

circumstances stated hereinafter. One Ram Kewal was directed to join as E.D. Mail Peon terminating the present arrangement vide order dated 28.9.88.

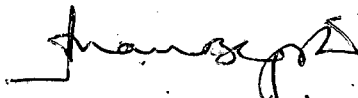
3. From the Counter Affidavit, it appears that on 7.8.84 Shri Shiv Kumar was locally adjusted as an outsider Postman temporary in Lucknow G.P.O. He himself on joining as an outsider Postman arranged his substitute <sup>(the applicant in the case)</sup> purely on his own responsibility and risk and that too without the approval of the then competent authority. On 28.9.88 in pursuance of the order of the Director Postal Services Lucknow letter dated 20.5.88 and conveyed by the Senior Supdt. of Post Offices, Lucknow vide letter dated 23.9.88 Shri Rajiv Kumar was reinstated in the Post Office Chaupatia and Shri Ram Kewal, a retrenched employee working as E.D. Sub Postmaster Chaupatia was ordered to join as E.D. Mail Peon Takmil Tib EDSO Lucknow on the same date and thereby putting to an end of the services of the applicant. The absence of the incumbent of the post and the engagement of substitute are to be regulated under the instructions issued by the Director General, Posts and Telegraphs vide circulars dated 24.2.70, 27.5.70, 18.8.73 and 20.3.71 as embodied in Swamy's Compilation of Service Rules for Posts and Telegraphs Extra Departmental Staff (1982 Edn). Obviously no one can be appointed as a substitute as the salary is paid by the Department and not by the person who appoints a substitute. Now the name of the substitute is forwarded to the competent authority and his name

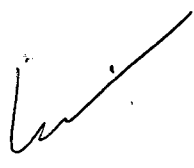
- 3 -

continues to be on record and that is why he gets salary . In view of the continuance of his name, his services were put to an end and another appointment was made. The applicant has placed before us the case of one S.B.Pandey who was a substitute for one Shri S.K.Srivastava and who after working for three years without break was allowed to continue as a regular employee and was also permitted to appear in the examination for promotion to the departmental post of Postman grade. In view of the said quoted example, the applicant has been disallowed the same benefit by the respondents. He has further stated that a new comer has been engaged against the post on which the applicant was working. In view of the discriminatory attitude which has been taken by the respondents, the applicant deserves to the relief claimed by him. Moreover, the applicant has worked for five years continuously and he has been placed on a better footing than any other new-comer. It will be inequitable to give any preference to new-comer.

4. The application is allowed with a direction to the respondents that they will give appointment to the applicant in case any new-comer has been appointed on the post on which he was working and in case no new-comer has been appointed the respondents are directed to consider the case for regularisation of the applicant, may be after taking the departmental examination in ca

the same has been done in the case of S.B.Pandey or otherwise. In any case, the respondents shall consider the applicant for appointment against any post after giving him priority in preference to any other person who has not worked continuously for five years as a substitute. The application is disposed<sup>d</sup> on the above terms. There will be no order as to costs.

  
Member (A)

  
Vice Chairman

Dated the 7th May, 1991.

RKM

(H/9)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

O.A No.188/88 (L)

Ram Kumar

.. Applicant

Versus

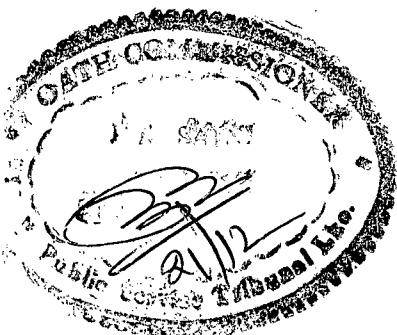
Union of India & others

.. Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS.

I, R.S. Sonkar aged about 42 years  
son of late Shri Baldev Ram presently posted  
as Asstt. Superintendent of Post Offices (West)  
Mahanagar, Lucknow, do hereby solemnly affirm and  
state as under:-

1. That the deponent is Respondent no.2  
in the above named application and have been  
authorised to file this counter affidavit on behalf  
of all the other Respondents.
2. That the deponent has read and understood  
the contents of the application filed by the applicant  
as well as the facts deposed to herein under in  
reply thereof.
3. Before giving the parawise comments  
on the application it is expedient in the interest  
of justice to submit the following few facts in



21/12/88

(A11)

brief, which are as under:

4. That there is a Post Office Extra Departmental Sub Office TakMIL TIB under the direct control of the Asstt. Superintendent Post Offices (West) Mahanagar, Lucknow. Shri Shiv Kumar, S/o. Shri Ram Charan was appointed as E.D. Packer in the said post office on 27.12.1980 who served on the said post upto 6.9.1984. On 7.8.1984 Shri Shiv Kumar was locally adjusted as out-sider Postman temporary in Lucknow G.P.O. and from that very date ie. 7.8.1984 he himself on joining as out-sider Postman arranged his substitute purely on his responsibilities to the applicant in his place with a Master and servant liabilities between both of them. The appointing authority/authority to sanction the leave whose prior approval for arranging substitute was mandatory was not obtained even till 28.9.1988. Shri Shiv Kumar was declared as successful Postman on 20.12.1987.

5. That On 28.9.1988 in pursuance of Director, Postal Services, Lucknow Region L.W-7 Memo No.RDL/Staff/A-1/88-89)3 dated 20.5.1988 and conveyed by the SSFOs Lucknow

Memo No. M/PF/2/3/ dated 23.9.1988 Shri Rajiv Kumar

EDSFM Chaupatia was Re-instated in the post office

Chaupatia and Shri Ram Kewal ~~Retrenched~~ employee working

as EDSFM Chaupatia was ordered to join as E.D. MF



21/12/88

Takmil Tib. EDSO Lucknow on the same date.

6. That the provisions of providing a substitute in his place during leave period is special extra ordinary facility extended to the permanent Extra Departmental agent vide Director General's instructions and the ~~same~~ same is to be approved before hand by the competent authority. A substitute provided so is not considered as an employee of Post Department and as such the provisions of the Post and Telegraphs Extra Departmental Agents(Conduct and Services) Rules 1964 are not applicable to the substitutes.

7. That it is only under Master and Servant liabilities between the E.D. Agents and the substitute concerned. Department has nothing to do with their personal affairs.

8. That in view of the aforesaid facts the applicant has no claim.

9. That the contents of paras 1 to 5 of the application need no reply.

10. That the contents of para 6(i) to 6(viii) of the application are incorrect, hence denied and it is submitted that -

(a) That one Shri Shiv Kumar, S/o. Shri Ram Charan and ED Agent(Packer) in Takmil Tib Post Office was



*[Handwritten signature]*

locally adjusted temporarily as out-sider post man in G.P.O. Lucknow and Shiv Kumar on joining as out-sider Postman arranged a substitute Shri Ram Kumar, the applicant (his brother-in-law) in his place without any prior approval of the then Competent authority.

(b) That providing a substitute in his place is an extra ordinary facility to the permanent E.D. Agents extended for the leave or absence under the provisions of the instructions of the Director General (Posts) as contemplated in Rule-5 of the R&T EDA(Conduct & Services) Rules 1964. As such a substitute so provided by ED Agents is on the Master-Servant liability basis between both of them. The postal department has nothing to do so with their personal affairs. Rules so provided are binding on ED agents only and not on his substitute.

(c) That the applicant was neither appointed by postal authorities nor terminated from the disputed post. It was the post earlier filed by Shri Shiv Kumar right from 27.12.1980. On 28.9.1988 after the promotion of Shri Shiv Kumar as postman the post of ED Facker T. Tib post office was fallen vacant and as such in pursuance of the Director Postal Services,



*[Handwritten signature]*  
21/12

Lucknow order dated 20.5.1988 conveyed by

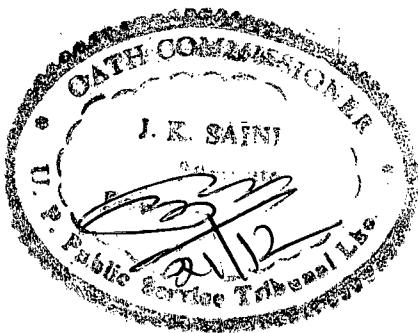
SSFOs Memo dated 23.9.1988 ~~thaxaxpxkixaxk~~

Shri Rajiv Kumar was re-instated as EDSPM

Chaupautia was ordered to join as EDMP T. Tib  
with effect from 28.9.1988.

(d) That it is also pertinent to mention here that the Rules 6 of the F&T EDA (Conduct & Services) Rules 1964 is applicable to the employees concerned who are appointed under the said rules. The applicant was never appointed. He was a substitute provided by his brother-in-law and his claim if any arises can be before his brother-in-law Shri Shiv Kumar who was his master. The Respondents have nothing to do with the claim of the applicant. The applicant till he served as substitute has been paid all allowances and dues suitably.

(e) That it will not be out of place to mention here that there is no such provision that a substitute is to be confirmed on the post of E.D. Agents by virtue of his working on the said post. The respective rules and the Industrial Disputes Act 1947 as referred by the



*[Handwritten signature]* 21/12



applicant are absolutely not applicable to him. No certificate for the working of the applicant has been issued by the competent Post Authority.

(f) That it is also submitted that question regarding acquisition of the status as stated in para 6(vii) of the application does not arise before the department concerned. The status can be claimed by the applicant before his master who engaged him in his place.

(g) That the respondents have acted correctly and as per the rules. No injustice has been caused to the applicant and there are no malice and arbitrary views of the respondents towards the applicant. The application of the applicant is wholly misconceived.

11. That the contents of para 7 of the application are incorrect, hence denied and in reply it is submitted that the applicant has not exhausted alternate remedy available to him. Since he was not an employee and even then if he was aggrieved, the doors of representation to the Higher Postal authorities were opened to him. As such the application is not maintained.

12. That the contents of para 8 of the application are not disputed.

*[Handwritten signature]*

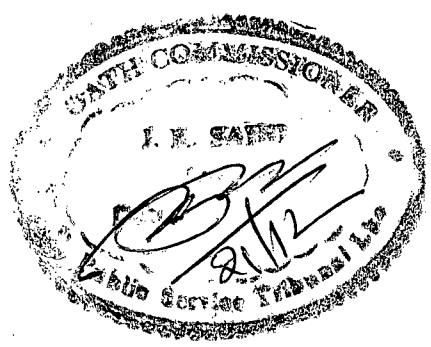


13. That in reply to para 9 of the application it is submitted that the applicant's application is wholly misconceived and he is not entitled for any relief claimed.

14. That in reply to para 10 of the application it is submitted that since the applicant was not an employee of the postal department his application is wholly misconceived and as such his prayer for interim relief is liable to be rejected and the same may kindly be rejected.

15. That in reply to para 11 of the application it is submitted that the applicant's abovesaid application is not maintainable and interference of this Hon'ble tribunal is not at all invited, hence the same is liable to be dismissed in limine.

16. That the para 12 and 13 of the application are not disputed except the Annexure A-1 for which it is submitted that no any certificate of that nature was issued and if at all it was issued it was invalid because of being said to have been issued by incompetent authority containing wrong facts and pertaining to some Ram Kumar.




*[Handwritten signature]* 21/12

(A17)

17. That in the circumstances aforesaid the application of the applicant under section 19 of the Central Administrative Tribunal Act is wholly misconceived and is liable to be dismissed with costs.

Lucknow

  
Deponent 21/12/88

Date: 21/12/88 December, 1988

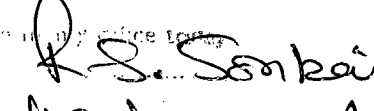
Verification


I, the abovenamed deponent do hereby verify that the contents of paras 1 to 13 of this affidavit are true <sup>to</sup> ~~my~~ personal knowledge and based on official records and those of para 14 to 17 on the basis of legal advice which I believe to be true. No part of this is false and ~~xx~~ nothing material has been concealed. So help me God.

Verified this 21/12 day of December, 1988 at Lucknow.

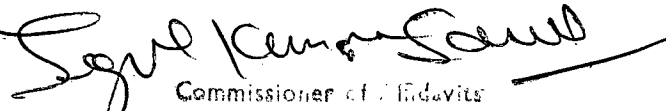



I solemnly affirmed before me on 21/12/88 at Lucknow who is identified by me as the Clerk to the

  
R.S. Sonkar  
V.K. Chaudhary

  
Deponent 21/12/88

I identified Shri R. S. Sonkar ASPOs (West) of Lucknow who is known to me and has signed before me.

  
Commissioner of Affidavits  
Court Compound, Lucknow.  
Date 21/12/88

  
(V.K. Chaudhary)  
Advocate  
Counsel for the Respondents.

Ram Kumar

Applicant

Versus

Union of India and others

Respondents

REJOINDER AFFIDAVIT OF THE APPLICANT

I, Ram Kumar, aged about 25 years son of Sri Maikoo Lal R/O Yaseenganj Canal Road, Chowk, Hardoi Road, Lucknow-3 do hereby state on oath as under ;

2. That the deponent has been read the counter affidavit filed by respondent no. 2, explained its contents in Hindi and has understood it and is replying to the same.

3. That in reply to the contents of para 1 of the counter, it is pointed out that the respondent no. 2 has not filed the authority said to have been given by respondents no. 1, 3 & 4 and in absence of the same, his contention that he has been authorised by all the other respondents cannot be sustained.

4. That the contents of para 2 of the counter need no reply.

5. That para 3 and ancilliary paras thereto is an attempt to misconstrue the case and they are not relevant as the applicant application could well be replied to parawise.

6. That the contents of para 4 of the counter are denied as alleged. It is submitted that the applicant was employed as ED Packer in the Extra Departmental Sub. office Tak-Mil TIB as a substitute in 1981 and worked with breaks off and on and since 1983 he has been working continuously without any break. The concerning records including the A. Rolla would make the position clear and the respondents are under an obligation to produce the records for the perusal of the Hon'ble Tribunal. The absence of the incumbent of the post and the engagement of substitute are to be regulated under the instructions issued by the Director General Post & Telegraph in his General Circular No. 23 dated 24.2.70, letters no. 43/63/69 Pen dated 27.5.70 and no. 5-5/72 ED Cell

Keep on record  
27/4/89

27/3/89

2.

dated 18.8.73 and letter no. 43/34/71 Pen dated 20.3.71 as embodied in Swamy's Compilation of Service Rules for Posts and Telegraphs Extra Departmental staff (1982 Edition). Under the said instructions, the substitute has to be approved by the appointing authority and under Rule 6 of the said Service Rules, the services of an ED employee cannot be terminated after he has already put in 3 years continuous service. Under Section 2(a) of the said Service Rules "Employee means a person employed as an Extra Departmental Agent." The applicant has been working as an E D Packer for the last over 5 years and drawing his allowances with the express as well as implied approval and sanction of the appointing authority and there can be no objection, whatsoever, to his employment now. For all intent and purposes the applicant is a regular employee to enjoy benefits of Rule 6 (ibid) and also Section 25 F of the I.D. Act. The rest of the contents of the para under reply are denied.

7. That the contents of para 5 of the counter are irrelevant, vague, indefinite and evasive. The particulars of Services of so called Rajiv Kumar and Ram Kewal and their connection with the Tak Mil TIB ED Sub-office has not been furnished. It may be stated that under the rules and instructions issued from time to time only the person for whom a substitute has been appointed has the right to replace him or the substitute can be dealt with under Rule 6,7&8 of the Service Rules and Section 25F of the I.D. Act and labour laws framed thereunder. There is no common seniority list for the E.D. Employees and no transfer can be made from one office to another. Sri Ram Kewal stated to <sup>be</sup> an ED SPM at Chaupatia has no right to replace and dislodge the applicant. The order dated 28.9.88 (annexure 3) passed by the respondent no. 2 is arbitrary, illegal and without any authority.

8. That the contents of para 6 are denied. The position has been clarified in para 6 above. A substitute has to be approved under the instructions issued by the Director General, Post and Telegraph, but not necessarily before him by the competent authority. The continuance of an ED substitute for a long time meets the approval of the competent authority if so facto and he cannot be disturbed except by the previous incumbent and his services are regulated under section 6, 7 & 8 of Service Rules

Unsubm

3.

and Section 25 F of the I.D. Act which have been violated in the case of the applicant. It is wrong to say that a substitute is not considered as an employee of the Postal Department. The definition given in Rule 2(a) of the Service Rules lays down that "Employee means a person employed as an Extra Departmental Agent and 2(b) gives the definition of Extra Departmental <sup>agent which includes ED</sup> Mail Peon and an Extra Departmental Packer as well. It is wrong to say that the provisions of the P&T Extra Departmental Agent (Conduct and Service) Rules 1964 are not applicable to the substitutes. The substitutes are employees and they are governed by the said Service Rules 1964 and also by the ID Act and labour laws as they/ also: <sup>are workmen</sup>

9. That the contents of para 7 are denied. The substitutes are duly approved by the competent authorities and they draw their pay and allowances from the Department and not from the ED Agents for whom they are employed.

10. That the contents of para 8 are denied. The substitutes work for the Department and they are governed under the Extra Departmental Agents (Conduct & Service) Rules, 1964 and ID Act & labour laws as they are workmen also.

11. That the contents of para 9 need no reply.

12. That the contents of para 10 as stated are wrong and misconceived. The contents of para 6(i) to 6(viii) of the application are based on fact and they are re-asserted and any assertion to the contrary is emphatically denied.

(a) That in reply to the contents of para 10(a) it is not disputed that the applicant was employed in place of Sri Shiva Kumar but it is denied that it was without approval of the competent authority. Under rules every substitute is approved by the competent authority and without approval he cannot work. The applicant has been working for a number of years, drawing his wages from the department in the A Roll and it would be ridiculous to say that the employment is without proper approval.

(b) That the contents of para 10(b) as stated are denied. It is not disputed that the permanent ED Agents have the right to provide substitute while proceeding on leave or absence due to arrangements elsewhere but the substitute has to be approved by

Un 3m

4.

the appointing authority as clarified by the Director General, Post & Telegraph vide his letter no. 43/34/71 Pen dated 20.3.71 referred to above. This provisional appointment is required to be continued for a short duration only and when it lasts for more than 3 years, the services of the substitute cannot be terminated in terms of rule 6 of the Extra Departmental Agent (Service) Rules and I.D. Act and labour laws which provide that after working continuously for one year the services cannot be terminated except by following the procedure laid down therein. The rest of the contents of the para under reply are denied. It is wrong to say that the relation of master and servant exists between the E.D. Agent and his substitute only and the Department has nothing to do with their personal affairs. The substitute is approved by the appointing authority and draws his wages from the department and for all intent and purposes he is the employee of the department.

(c) That the contents of para 10(c) as stated are wrong and hence denied. The applicant has been the employee of the department and drawing his wages as regular employee and he was duly approved by the appointing authority under the rules and he cannot be removed from his post without following the procedure as laid down in EDA (Conduct & Service) Rules 1964 and I.D. Act 1947 and labour laws. The applicant has been a substitute of Sri Shiva Kumar and only he could replace him and not any body else viz: Rajiva Kumar as stated in this para. The post of E.D. staff is not a transferable one and there is no common seniority list. It may also be stated that the contents of this para are contradictory to those contained in para 5 of the reply.

(d) That the contents of para 10(d) as stated are denied. Rule 6 of the Post & Telegraph, Extra Departmental Agent (Conduct and Service) Rules 1964 relates to an employee and the definition of employee is given in Rule 2 of the said rules as a person employed as an Extra Departmental Agent including EOMP and ED Packer. The applicant was employed to work as EOMP/ED Packer and worked satisfactorily for more than 3 years and he cannot be dislodged/removed against the rules. The applicant has not been

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a personal servant of Shiva Kumar, nor getting his wages from him, but the applicant has been performing the work of the Postal Department and being paid by it and in view of that, the applicant's claim lies against the Postal Department viz. respondents and not against Shiva Kumar.

(e) That the contents of para 10(e) are denied as being in contravention of the clarification given by the Director General Post & Telegraph vide his letter dated 20.3.71. The respondents cannot deny the fact that the applicant has been under employment for the last over 3 years with satisfactory service to his credit and being an employee and workman he is governed by the EDA Service Rules and I.D. Act.

(f) That the contents of para 10 (f) are denied and those of para 6(vii) are re-asserted.

(g) That the contents of para 10(g) are denied. It is wrong & incorrect to say that the respondents have acted correctly and as per the rules, no injustice has been caused to the applicant there is no arbitrariness and malice on the part of the respondents and the application is misconceived. On the contrary, the application is based on fact, rule, equity and justice and liable to be allowed.

13. That the contents of para 11 are denied. There is no alternative remedy provided in the Rules. It may be pointed out that the respondents have blown hot and cold in the same breath saying that the applicant has not exhausted the alternative remedy available to him and further he was not an employee. If he is allegedly not an employee how he could avail departmental remedy. The nature of departmental remedy has also not been stated. In fact, no alternative remedy was available to the applicant who came before this Hon'ble Tribunal for justice. The application is maintainable.

14. That the contents of para 12 of the counter needs no reply

15. That the contents of para 13 are denied. The application is proper and the applicant is entitled to the reliefs claimed in para 9 of the application.

16. That the contents of para 14 are denied and it is pointed

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out that the respondents did not furnish their objection, if any, against the interim relief by 21.11.88 the date fixed by Hon'ble Tribunal. The interim relief was, however, not allowed and was subjected to the success of the application.

17. That the contents of para 15 are denied. The application is just, proper, maintainable and liable to be allowed with cost.

18. That ~~the~~ in reply to the contents of para 16 it is pointed out that the respondents have not questioned <sup>ed</sup> annexure A-1 in para 10 of their reply. The certificate was issued by the ~~ED~~ SPM, the head of the office and cannot be challenged.

19. That the contents of para 17 of the counter is wrong and misconceived and hence denied. The application lies under Section 19 of the Central Administrative Tribunal Act and is liable to be allowed with cost.

Lucknow, Dated:  
April 17, 1989.

*U. N. Singh*  
Deponent.

#### VERIFICATION

I the above named deponent do hereby verify that the contents of paras 1 to 16 are true to my knowledge and those of paras 17 to 19 are believed to be true. No part of it is false and nothing material has been concealed, So help me God.

Verified this day of April 1989 at Lucknow.

Lucknow, Dated:  
April 17, 1989.

*U. N. Singh*  
Deponent.

I identify the deponent who has signed before me.

*Advocate*  
Advocate.

Solemnly affirmed before me on this day of April 1989, at A.M/P.M. by Sri Ram Kumar, the deponent who is identified by Sri *M. Dubey* Advocate, High Court Allahabad, Lucknow Bench, Lucknow.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which has been read out and explained by me.

724

In The Central Administrative Tribunal, Circuit Bench, Lucknow.

C.A.No. 188/88L

Picked today  
5/5

Ram Kumar

.....Applicant

Versus

Union of India and others

.....Respondents

Supplementary Rejoinder Affidavit of the applicant.

I, Ram Kumar, aged about 25 years, S/o Shri. Maikoo Lal r/o Yaseenganj canal road, Chokk Hardei Road, Lucknow, do hereby state on oath as under:-

1. That the deponent is the applicant in the above noted case and he is fully conversant with the facts deposed to in this affidavit.
2. That one Shri Shyam Bihari Pandey was a substitute for Shri shee shanker srivastava as EDMP in chowk Head Post office and the former in his capacity as substitute having put in 3 years service with breaks was allowed the benefits of a regular employee to ~~appear~~ continue in service and permitted to appear in the examination for promotion to the departmental post of postman grade, but similar concession has been disallowed to the deponent who has been treated differently in violation of Articles 14 & 16 of Constitution.
3. That in the similar circumstances the said Shri Shyam Bihari Pandey was allowed benefit of service and continuance and further promotion to departmental post of postman grade, while the deponent has been wrongly stated to be a private servant and denied of all concessions prejudicially and maliciously.
4. That a raw and new hand has been engaged by the respondent No. 2 against the post to which the deponent has preferred his claim.

Lucknow.  
17.5.89.

*(Signature)*  
Deponent

Verification  
66

I, the deponent named above, do hereby verify that the contents

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18.7.89

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..2..

Paras 1 to 4 of this supplementary rejoinder affidavit are true  
to my knowledge.

Signed and verified this 17th day of May, 1989

at Lucknow.

Lucknow.

17.5.89.

  
Deponent

I identify the deponent who has signed  
before me.

  
( M. Dubey )  
Advocate.

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE  
TRIBUNAL ACT 1985.

Ram Kumar

... Applicant

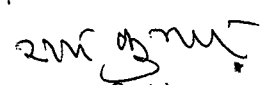
Versus

Union of India & others

... Respondents

INDEX

<u>Sl.No.</u>	<u>Description of documents relied upon</u>	<u>Page No.</u>
1.	Application	1 to 7
2.	True copy of certificate dated 5.10.88                      Annexure A-1	8
3.	True copy of the A.Roll for September, 1988                      Annexure A-2	9
4.	True copy of the order dated 28.9.88                      Annexure A-3	10
5.	Vakalatnama	
6.	Postal order for Rs. 50/-	

  
Signature of the applicant

For use in Tribunal's office

Dated of filing :

Registration No.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
CIRCUIT BENCH, LUCKNOW

Between

Ram Kumar

... Applicant

Versus

Union of India & others

... Respondents

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Details of application

1. Particulars of the applicant.

- i) Name of the applicant : Ram Kumar
- ii) Name of father : Sri Maiku Lal
- iii) Age of the applicant : 25 years
- iv) Designation and particulars of the office in which employed ) ED Packer  
T.Tib P.O.  
Lucknow - 3
- v) Office address : Ram Kumar, ED Packer, T.Tib  
P.O. Lucknow-3.
- vi) Address for service of notices ) Ram Kumar, Yaseenganj,  
Camel Road, Chowk,  
Hardoi Marg, Lucknow-3.

*Recd duplicate  
for perusal  
26/10*

2. Particulars of the respondent :

- i) Union of India, through the Secretary,  
Ministry of Communication, Govt. of India,  
New Delhi.
- ii) Asstt. Superintendent of Post Offices (West)  
Mahanagar, Lucknow.
- iii) *Mail Overseer West Chowk*  
*Sub Postmaster, Mahanagar, Lucknow-3*
- iv) ED Sub Postmaster, T.Tib P.O. Lucknow-3.

3. Particulars of the order against which application is made.

The application is against the following orders :

- i) Order No. A Chaupatia
- ii) Date : 28.9.88
- iii) Passed by : Asstt. Superintendent of Post  
offices, Lucknow West Sub Division  
Lucknow.
- iv) Subject in brief : Purporting to dislodge  
the applicant from his  
post.

*राम कुमार*

- 2 -

## 4. Jurisdiction of the Tribunal :

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

## 5. Limitation :

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

## 6. Facts of the case :

~~THE~~ The facts of the case are given below :—

i) That the applicant was appointed as a substitute ED packer/ED LP acknowledged and duly approved by respondent no. 2, who is the appointing authority, in 1981 and worked as such with breaks off and on and since ;983 he has been working continuously without any break. His work and conduct since his appointment in 1981, have ever been satisfactory without any complaint or adverse remark whatsoever. A true copy of the certificate served by the Sub Post Master, P.O. Mansoor Nagar, Lucknow-3, ~~on 14.3.86~~ showing his continuous service from 1983, is Annexure A-1.

i i) That the applicant, in consideration of his satisfactory services as ED Packer/ED Mail Peon T.Tib P.O. Lucknow - 3, was allowed to work as ED Sub Post Master T.Tib P.O. Lucknow-3, from 4.1.86 to 14.3.86 and also as outsider Class IV employee on daily wages at Mansoor Nagar P.O. by giving his substitute at his responsibility.

iii) That initially the applicant was a substitute for Shri Shiva Kumar ED Packer/ ED IP T.Tib P.O., who was allowed to work as outsider Class IV and Postman. The applicant after putting in

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continuous service of 3 years in April, 86, became regular for all intent and purposes and his services cannot be terminated under Rule 6 of the P&T EDA (Service & Conduct) Rules 1964 which govern the service conditions of the applicant. The said Rule 6 reads as under :

Rule 6 - Termination of Services

"The services of an employee who has not already rendered more than three years' continuous service from date of his appointment shall be liable to termination by the appointing authority at any time without notice".

- iv) That although the applicant was appointed as a substitute initially, but after completing 3 years continuous service, he became at par with regular employees and he did not remain merely a substitute as envisaged under afore-said Rule 6 and as would be evident from the A Roll for September, 83 prepared for the ED employees at T.Tib P.O., a photo copy of which is annexed as Annexure A-2.
- v) That the applicant being a workman is entitled to the safeguards and benefits envisaged by the Industrial Disputes Act 1947 and as he has been in continuous employment for over 5 years, he cannot be retrenched without following the provisions of Labour Laws including Section 25 F & 25 H which provide certain obligations on the part of employer to be fulfilled before making retrenchment of any workman who has been in continuous employment <sup>for</sup> not less than one year.
- vi) That the respondent no. 2 in utter disregard

27/11/86

of the provisions contained in Rule 6 of the ED (Conduct & Service) Rules 1964 and sections 25F and 25N of the Industrial Disputes Act 1947 has sought to terminate/retrrench the services of the applicant. The action of the respondent no. 2 is malicious, arbitrary, illegal and contrary to law. The respondent no. 2 has issued orders directing the Mail Overseer West to get joined one Ram Kewal as ED MP T.Tib P.O. terminating the present arrangement. This order dated 28.9.88 seeks to dislodge the petitioner although his name has not been mentioned and no order in respect of him has been passed. A true copy of this order is Annexure A-3.

vii) The impugned order dated 28.9.88 Annexure A-3 seeks to dislodge the applicant from his post. To re-state in concise ~~form~~ <sup>term</sup> the case of the petitioner before this Tribunal is that he was appointed as a substitute in the vacancy caused by the promotion of Shri Shiva Kumar to the post of outside Class IV/Postman and subsequently promoted to the Postman Cadre on a regular basis. The rule regarding appointment of the substitute is to the effect that whenever an extra departmental Agent wants to avail of leave, he can do so by giving a substitute of his choice and intimate the same to the appointing authority. The appointment of substitute is thus, a matter purely between the Extra Departmental Agent and the Substitute. The appointing authority may ~~approve~~ such arrangement but there is no rule for refusing to recognise the substitute. This is so because the extra Departmental Agent do not get leave from the department, nor there is

राम कुमल



any provision for their suspension from service. After continuance of the applicant for a long time duly acknowledge and approved by the respondents, the petitioner has acquired the status of regular employee in view <sup>as</sup> Rule 6 and he cannot be removed from service except after following the prescribed procedure. Sri Shiv Kumar has not been reverted to his original post held by the petitioner now. In case of abolition of any post, the question would not be of termination of service but that of retrograde post, which can only be done by following the prescribed law. It is further pointed out that even abolition of post cannot affect the employment of the petitioner. It can only result in the loss of service of the post, whose post has been abolished and rights of such a person cannot be adjusted against the post held by the applicant. There is no question of seniority or cadre for that post, i.e. The BDA is a class by itself not subject to transfer. There is no lien of any person to hold the post of BDA. The respondents have not served any written order on the applicant but are conveying by word of mouth that the service of the petitioner has come to an end and the respondent no. 2 <sup>as</sup> have threatened not to allow the petitioner to work from 8.10.86 and have also threatened to procure the assistance of local Police <sup>to</sup> put him from office. They have since restrained the applicant from working.

viii) That the applicant is aggrieved by the arbitrary, malicious and illegal action of the respondents and has no alternative but to file this application before this Hon'ble Tribunal.

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7. Details of remedies exhausted :

The applicant declares that there is no remedy under the rules and as such availing of remedies under service rules does not arise.

8. Matter not previously filed or pending with any other Court.

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court of law or any other authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them.

9. Reliefs sought :

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

- a) The respondents be directed to produce the order dated 28.9.88 in original and the same be quashed to the extent as it affects the applicant.
- b) The respondents be directed not to dislodge ~~and illegally against~~ the applicant from his post arbitrarily and illegally against the provisions of law.
- c) The respondent, be directed to regularise the services of the applicant as he has already put in more than 5 years continuous service.
- d) Cost of the case be allowed in favour of the applicant as against the respondents.
- e) Any other relief deemed just and proper, in the circumstances of the case be allowed in favour of the applicant.

10. Interim order, if any, prayed for :

Pending final decision on the application, the

राम कुमार

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A32

- 7 -

applicant seeks issue of the following interim order.

- a) The operation of the order dated 28.9.88 so far as it affects the applicant be stayed and the respondents be directed not to dislodge the applicant from his post and an ad-interim order to the same effect be passed immediately.

11. The application is of an urgent nature and it may ~~not~~ be heard immediately.

12. Particulars of the Postal order in respect of the application fee :

- a) Number of the Indian Postal Order(s). <sup>DD</sup> 5 665149  
b) Name of the issuing Post Office. <sup>Po</sup> High Court Lucknow  
c) Date of issue of postal order(s) 6-10-88  
d) Post office at which payable. Allahabad G.P.O.

13. List of enclosures :

- a) Copy of certificate dated 5.10.88. : A-1  
b) Copy of A Roll for September '88 - A-2  
c) Copy of order dated 28.9.88 : A-3

#### VERIFICATION

I, Ram Kumar, s/o Shri Maikoo Lal, age 25 years working as ED Packer/Pail Peon in the office of T.Tib P.O. resident of Vasconganj Canal Road, Chowk, Hardoi Road, Lucknow-3, do hereby verify that the contents of paras 1 to 8, 11, 12 and 13 are true to my personal knowledge and those of paras 9 and 10 are believed to be true on legal advice and I have not suppressed any material fact.

राम कुमार

Lucknow :

Signature of the Applicant

Dated : 7.10.88

To 21

The Registrar

(8) (9)  
(A33)

ATTACHURE A-1

This is to certify that Mr. Ram Kumar  
is working as EDA at P.O. T.Tib, since 1983,  
and is known to me.

Sd. Illegible  
Sub-Post Master  
P.O. Lansoor Nagar  
Lucknow - 3

राम कुमार

Attested  
True copy  
M. Dubey  
Advocate

TAKMIL-UT-TIS  
LUCKNOW

Annexure A-2

(9)

(10)

(480)

T. Tib Ro

ए. सी. जी. 24 (बड़ा)  
A. C. G. 24 (Large)

भारतीय डाक विभाग  
DEPARTMENT OF POSTS INDIA  
(डाक-तार वित्तीय नियम पुस्तिका, खण्ड I का परिशिष्ट II देखिए)  
(See Appendix II, Posts and Telegraphs Financial Handbook, Volume I)  
(सोप्री जोर/OVERSE)

B-5  
10/88

वेतन बिट्टा/Acquittance Roll

वेतन और भत्तों के भुगतान के प्रमाण में दर्ज किया जाए।  
To be entered in the memorandum of disbursement of pay and allowances.

महीना..... 198

के लिए

संख्या/No. 119

से सम्बन्धित स्थापना का  
of the Establishment attached to the  
for the month of Sept 198

1	2	3	4	5	6	7
हर कर्मचारी का नाम और पदनाम Name and designation of each employee	बिल में निकाला गया वेतन Pay drawn in the bill	कटौतियाँ और निधि के योग Deductions and contributions to funds	हर कर्मचारी को भुगतान योग्य राशि Net amount payable to each employee	भुगतान की तारीख Date of payment	भुगतानकर्ता की हस्ताक्षर Signature of payee	गणना 3 में दर्ज की गई कटौतियों का योग Particulars of deductions entered in column 3
Asst. Plt. Smt. Sharda Dubey	285- 25- 69- 179-	179-	479-			
FSL	3-		3-			
Ram Kumar	420- 76- 496-	496-	496-			

30/9/88

30/9/88

30/9/88

राम कुमार

ध्यान दें—यदि भुगतानकर्ता अक्षरहीन हो तो पहचान के चिह्न और गवाह के हस्ताक्षर लगाए जाने चाहिए।  
Note—When the payee is illiterate, his mark of identification and the signature of a witness should be affixed.

Witnessed True  
M. Dube

A38  
10

ANNEXURE A-3

o/o Department of Posts  
Asstt. Supdt. of Post Offices  
Lucknow Post Sub Division  
Lucknow - 226006

Memo No. A/Chaupatia dated Lucknow : 28.9.88

In pursuance of D.P.S. Lucknow Region LW-7  
Memo No. RDI/Staff/A-1/88-89/3 dated 20.5.88 and  
conveyed by the SSPOs Lucknow memo no. H/PP-2/3 dated  
23.9.88 Shri Rajiv Kumar ED SPM Chaupatia ED so  
Lucknow is hereby ordered to reinstate with  
immediate effect.

Charge report should be submitted :

Sd. R.S. Sonkar  
Asstt. Supdt. of Post Office  
Lucknow Post Sub Dn.  
Lucknow - 226 006

Copy to :

- 1) Shri Rajiv Kumar ED SPM Chaupatia ESO LW.
- 2) The Sr. PM Lucknow-3.
- 3) The SSPOs Lucknow with reference to his memo.  
no. H/PP-2/3 dated 23.9.88.
- 4) The mail of West LW - He will please get  
transferred the complete charge of ED SPM  
Chaupatia to him and Shri Ram Kewal ED  
SPM (Chaupatia/rentrench employee) may be  
be got joined as EDMP T.Tib EDSO temporarily va  
vacancy considered to promotion of Shri Shiv  
Kumar in Postman Cadre terminating the present  
a arrangement till further order.

Attended  
me by  
M. Dubey  
Adv

A36

ब अदालत श्रीमान्

Central Administrative Tribunal,  
Circuit Bench, Indore

महोदय

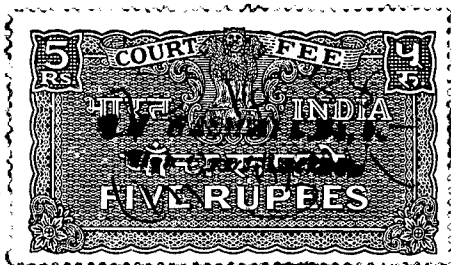
[वादी अपीलान्त]

श्री

प्रतिवादी [रेस्पांडेंट]

का

वकालतनामा



वादी (अपीलान्त)

Ram Kumar

बनाम

प्रतिवादी (रेस्पांडेंट)

Union of India and others

नं० मुकद्दमा

सन्

पेशी की ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

B. Solomon, Adv., High Court

Indore & M. Duley Adv., 6th Lane, Nanwaiya,

Ganeshganj, Indore

वकील

महोदय

एडवोकेट

नाम अदालत	नाम फरीकन
मुकद्दमा नं०	बनाम

को अपना वकील नियुक्त करके प्रतिज्ञा ( इकरार ) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रुपया जमा करें या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसोद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १९८८ ई०

स्वीकृत

B. Solomon Adv.  
M. Duley Adv.