

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE ...*C.A. 114*... OF ...*89*...

NAME OF THE PARTIES ...*Sri. P. Ram Shanker*... Applicant

Versus

The Director Postal Accounts U.P. Respondent

Part A.

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CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

Dated ...*14/6/2011*...

File B/C destroyed on 09-5-12

Counter Signed.....

Section Officer/In charge

Signature of the
Dealing Assistant

Central Administrative Tribunal

Lockdown Search

Case No. Title *O A 114/89 (2)* 1993

Praveen Shankar Applicant.
Director of Road (Accounts)
Udumtircle Respondents

Part 1.3.1.

Description of documents

Check list

Order sheet

Final Judgment

Petition Copy

Annexure

Power

County Affidavit

Rejoinder Affidavit

M.P.

8- File

8- File

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(A) 29/5

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 114 of 1989 (L)

APPLICANT(S) Prem Shankar

RESPONDENT(S) Union of India

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 ? | Yes |
| 3. a) Is the appeal in time ? | Yes |
| b) If not, by how many days it is beyond time ? | No |
| c) Has sufficient case for not making the application in time, been filed ? | Yes |
| 4. Has the document of authorisation/ Vakalatnama been filed ? | Yes |
| 5. Is the application accompanied by B.D./ Postal Order for Rs. 50/- | Yes |
| 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 |
| 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 representation been indicated in the application ? | Yes |
| 10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal ? | No |

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<u>Particulars to be Examined</u>	<u>Endorsement as to result of examination</u>
11. Are the application/duplicate copy/spare copies signed ?	Yes
12. Are extra copies of the application with Annexures filed ?	Yes
a) Identical with the Original ?	Yes
b) Defective ?	No
c) Wanting in Annexures	No
Nos. _____ pages Nos _____ ?	
13. Have the file size envelopes bearing full addresses of the respondents been filed ?	No
14. Are the given address the registered address ?	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 ?	Yes
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

dinesh/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. 114 of 1989 (C)

APPELLANT
APPLICANT

Prem Shanner

VERSUS

DEFENDANT
RESPONDENT

U.O.

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
<u>19.7.09</u>	No Sitting. Adj. to 11.0.09.	
<u>11-8-89</u>	<p><u>Hon'ble Mr. D.K. Agrawal, J.M.</u></p> <p>Mr. Qamrul Hasan learned counsel for the applicant heard.</p> <p><u>Admit.</u></p> <p>Issue notice to respondents to file counter affidavit within six weeks to which the applicant may file rejoinder within two weeks thereafter.</p> <p>List this case on 10-11-89 for orders/hearing as the case may be.</p> <p>Member (J)</p> <p>(rrm)</p> <p>Hon' Mr. D.K. Agrawal, J.M.</p> <p>Hon' Mr. K. Chatterjee, J.M.</p> <p>Shri Qamrul Hasan counsel for the applicant is present. Shri V.K. Chaudhary counsel for the respondents has sought 4 weeks time to file reply. Allowed. Let counter be filed within 4 weeks to which the applicant may file rejoinder within 2 weeks thereafter. List this case on 25-7-90 for orders/hearing as the case may be.</p>	<p>OR</p> <p>Notices were issued on 17.0.09.</p> <p>Neither reply nor any answer. reqd. Copy has been retained back.</p> <p>Submitted for order:</p> <p>L</p> <p>9/11/89</p>

See original order on main Petition

10/11/89

AM.

7M.

(SAS)

0A114/BSL

(Signature)

18.2.92

No Siding of D.B. appn 23.4.92
d

23.6.92

No Siding of D.B. appn
24.6.92
d

012
No C.A. filed
Sofa Lappan
fruits 24/8

26.6.92

Hon. Mr. Justice C.C. Srivastava, VC
Hon. Mr. K. Abayya, AM.

Copy of the Counter affidavit
is not record. Office to
trace the Copy of the same
and keep it on record.
Copy of the Counter affidavit
may be given to the Counsel
for the applicant today. He
may file Rescinder affidavit
within 2 weeks more after.
List this case on 18.8.92
for hearing.

(Signature)
Am.

(Signature)
V.C.

(Signature)

18.8.92

No Siding of D.B. appn
to 15.9.92
f

O.R.
No C.A. filed.

S.F.A. 15.9.92 Case not read off N

8
14/9/92

27.10.92

d
Mar

O.A.No.114/89(L)

AS

22/2/93. Hon.Mr.Justice U.C.Srivastava,V.C.
Hon.Mr. K. Dayya, A.M.

After hearing the counsels for the parties the case is disposed of as the pleadings are complete.

Judgement has been dictated in the open Court.

(tgk)

A.M.

V.C.

LUCKNOW BENCH, LUCKNOW

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (XXXXXXXXXXXXX) ALLAHABAD.

O.A.No.114/89(L)

OF 199

O.A.No.

T.A.No.

Date of decision: 22/2/93

Prem Shanker

Petitioner

S.G. Hasan

Advocate for the petitioner.

Versus

U.O. & Others

Respondents.

V.K. Chaudhary

Advocates for the Respondent(s)

CORAM :-

The Hon'ble Mr. Justice U.C. Sircastava, V.C.

The Hon'ble Mr. K. Obayya, AM.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether to be circulated to all other Benches ?

NAQVI/

Signature

(A-7)

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW.

O.A.No.114/89(L)

Prem Shanker

:::::

Applicant

Vs.

Director of Postal
(Accounts) U.P.Circle,
& Others.

:::::

Respondents.

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

Hon.Mr. K. Obayya, A.M.

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

The applicant was appointed as a daily-wager (Labourer) in the post office at Lucknow on 20/12/83 after his name was sponsored by the Employment Exchange and after giving clearance by the Selection Committee. Earlier he was paid at the rate of Rs.7.90 per day which was subsequently raised to Rs.12.40 per day. His posting was made in the Head Office of the Director of Postal (Accounts), Aminabad, Lucknow, and in 1987 he was posted in postal accounts branch at Way Road, Lucknow.

2. According to the applicant, he moved an application for leave, because of the marriage of his sister, for 3 days, between 11/7/88 and 13/7/88. But on 16/7/88 when he returned he was told that his services were put an end to. According to the applicant, this was done in order to accommodate one

Shri Mohan Singh

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O.A.No.114/89(L)

• • • • •

Applicant

Vs.

• • • • •

Respondents

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

Hon. Mr. K. Obayya, A. M.

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

The applicant was appointed as a daily-wager (Labourer) in the post office at Lucknow on 20/12/83 after his name was sponsored by the Employment Exchange and after giving clearance by the Selection Committee. Earlier he was paid at the rate of Rs.7.90 per day which was subsequently raised to Rs.12.40 per day. His posting was made in the Head Office of the Director of Postal (Accounts), Aminabad, Lucknow, and in 1987 he was posted in postal accounts branch at Way Road, Lucknow.

2. According to the applicant, he moved an application for leave, because of the marriage of his sister, for 3 days, between 11/7/88 and 13/7/88. But on 16/7/88 when he returned he was told that his services were put an end to. According to the applicant, this was done in order to accommodate one Shri Mohan Singh, who is nephew of an office employee. He made various representations in this behalf to various authorities including U.P. Paru Aaram Vimukta Jana Jaati Samiti and even to Prime Minister. But apart from the acknowledgement receipt, he did not get any relief. Thereafter he approached this Tribunal making complaint.

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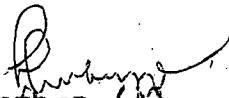
that several daily-rated labourers are working in the department and after putting more than 240 days of service they were regularised while the applicant who has worked for so long, has not been regularised and he has been terminated from service in this manner without giving even temporary status.

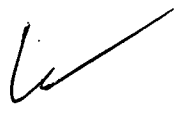
3. According to the respondents, the applicant was only a casual labourer working on daily-wage basis. Whenever the services of daily-wagers were required the applicant's services were taken by the department and he was not covered by the CCS (Conduct) Rules or CCS (Temporary Service) Rules. He was habitually absenting himself whenever there was exigency of service. While working in N.S.C. section at 19-Way Road, Lucknow, the regular Choukidar was on leave and ^{as} the work of Choukidar was managed by daily-rated mazdoor on such occasions, his services were required. But the applicant was absent on one such occasion. The work of Choukidar being a responsible one, it could not be pulled on without any responsible person. As such, a substitute in the absence of the applicant was engaged from 11-7-88 against the applicant. His behaviour with his superiors was also not found upto the mark. The applicant, when entrusted to guard the building, has allowed unauthorised persons to enter the premises of the office which caused nuisance and disruption in the work. This fact was also confirmed by the applicant. As the applicant was not found fit for work and there was no work, his services were put an end to.

4. It appears that there was work and subsequently also various persons were engaged and also deserving

AR

employees who were found fit, were allowed to work and they were also considered for regularisation in Group 'D' posts, after the requisite period of work. As the applicant has worked for a considerable period of time, being a member of S.C. community, the respondents shall consider his case for re-engagement. After re-appointment, his case may also be considered for regularisation in case the persons with lesser period of service have been regularised. Let this be done within a period of three months from the date of communication of this order. No order as to the costs.


Member (A)


Vice-Chairman.

Dated: 22nd February, 1993, Lucknow.

(tgk)

AD-10

In the Central Administrative Tribunal, Addl. Bench,
Allahabad, Circuit Bench,
Lucknow. Central Administrative Tribunal

Circuit Bench, Lucknow
Date of Filing 29/5/89
Date of Receipt by Post.....

Deputy Registrar(J)

Application no. 114 of 1989(L)

Sri Prem Shanker

...Applicant

Versus

The Director Postal(Accounts)U.P.Circle,
and others Respondents

Index

Sl.no.	Documents	Page
1.	Petition	I-I4
2.	Impugned order dt. 28.7.1988 orally terminating applicant's services by the opp. party no.2	
3.	Vakalatnama	
	Postal order no.	dt. 1989

Filed Today noted
19.7.09

Hasan
29/5/89

Lucknow dated:
May 22, 1989

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Hasan
(Qamrul Hasan)
Advocate
Counsel for the applicant



In the Central Administrative Tribunal, Adml. Bench, Allahabad
Circuit Bench, Lucknow.

Application no. 114 of 1989 (12)

Sri Prem Shanker ,aged about 25 years,
Sri Desh Raj, resident of House no.554, Kha/69
Bisheswar Nagar, Post Alambagh, city Lucknow,
district Lucknow.

....Applicant

Versus

1.The Director Postal (Accounts)U.P.Circle,
Lucknow.

2.The Accounts Officer, Rashtriya Bachat Patra
Shakha, Office of the Director Postal Accounts,
Branch I9-way Gokhley Marg, Lucknow.

3.Sri B.L.Devgan, Accounts Officer, Office of
the Director Postal(Accounts), Branch I9-Way
Gokhley Marg, Lucknow.

... Respondents

Details of Application

2. Particulars of the Applicant

I.Name of applicant	Prem Shanker
II.Name of father	Sri Desh Raj
III.Designation and particular of office	Daily Rated Labourer Accounts Officer Office

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IV. Age

25 years

V. Office

Accounts Officer,
Rashtriya Bachat
Patra Shakha, 19-Way
Gokhley Marg, Lucknow.

VI. Address of service of
notices

Sri Qamrul Hasan,
Advocate
349, Gagni Shukl,
city Lucknow.

1. Particulars of the orders
against which the application
is made.

The application is
against oral order
of termination
dated 18.7.88 given
by opp.party no.2

2. Nature

(A) For quashing of impugned oral order of
termination given by opp.party no.2
on 18.7.88.

(B) For the issue of Mandamus to respondents
to allow the applicant to continue to work
on his post of Chowkidar in the office of
opp.party no.2 and to pay him monthly ~~wages~~
wages which are due and to pay him regularly.

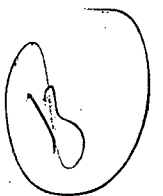
3. Jurisdiction of the Tribunal.

The applicant declares that the subject
matter of the order against which he wants
redressal, is within the jurisdiction of the
Addl. Bench, Allahabad, Circuit Bench, Lucknow.

3. Limitation

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

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4. Facts of the Case.

- 4-1. That the applicant is challenging the oral order of termination given by the opp.party no.2 on 18.7.1988 saying that in applicant's place he has engaged another person.
- 4-2. That applicant's educational qualification is High School and he belongs to a Scheduled Caste Family(Tharu).
- 4-3. That the applicant's name was sponsored by the Employment Exchange on 2.12.1983 for selection and engagement as Daily rated labourer ,which date was fixed for 20.12.1983. A true photostat copy of the Call letter is annexed as Annexure-I.
- 4-4. That the Selection Committee found the applicant as a suitable candidate for the post of IVth Class Daily rated labourer and as such the applicant joined the post in December 1983.
- 4-5. That at the time of engagement, the applicant was being paid Rs.7.90 per day and the same was subsequently revised as Rs.12.40.
- 4-6. That applicant's first posting was made by the competent Authority in the Head Office i.e. Director Postal (Accounts), Aminabad, Lucknow and in the year 1987 he was posted in the office of opp.party no.2 at Postal Accounts Branch Office, 19-way Gokhley Marg, Lucknow.

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5-7. That it is pertinent to mention that on 11.7.1988 there was a marriage of applicant's sister and for this reason he had moved leave application on 8.7.88 for 3 days (w.e.f. 11.7.88 to 13.7.88) and sought permission to leave the office from the opp.party no.2 who allowed the applicant to do so on the ground that wages will be deducted hence no objection.

5-8. That in such circumstances, the applicant proceeded on 11.7.88 in the evening to his parents place and participated in the sister's marriage and did the needful.

5-9. That on 16th July, 1988 the applicant returned back to Lucknow. He reported for duty to Sri B.L.Devgan, opp.party no.3 on 18.7.1988, 16th and 17th July being holidays. The said Officer told the applicant;

"Aap ke jagah per doosra Aadmi rakh liya hai"
On the basis of the above order, the applicant became helpless and made repeated requests to opp.party no.3 but he turned deaf ears.

5-10. That it is worthwhile to mention that opp.party no.3 on account of his caste feelings engaged another person of high case against applicant's post, though his name was not sponsored by the Employment Exchange. The applicant also learnt that said person is a nephew of an Office employee (Daftree), namely Mohan Singh.

गम 27/7/88

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4-II- That on 22/8/88 on behalf of the applicant, the Sanchalak, U.P. Tharu Aram Vimukti Janjati Samiti, Lucknow made a representation to Post Master General U.P. Circle Lucknow against the oral order of Termination of Prem Shankar, being a Scheduled Caste (Tharoo). A true photo-stat copy of the representation is annexed as Annexure-2.

4-I2- That the applicant's representation made to Director Postal (Account) was attached alongwith the Annexure-2 to the writ petition and mentioned about the arbitrary and illeg^{act}~~ation~~ done by the opp. party no. 2. A true photostat copy of the same is annexed as Annexure-3 to this application.

4-I3- That in this connection, the applicant contacted a ^{care}~~Care~~-taker who carried the applicant to the room of the Deputy Director Postal (Account) ^{where}~~when~~ The applicant appeared personally before him and narrated about the har^{ass}~~ass~~ment and high handedness of the Opp. Party no. 3 who had acted ~~maliciously~~ and at the behest of the employee whose nephew was to be accommodated.

4-I4- That on 26 August, 1988, the applicant again met the Care-taker who told the applicant that the Deputy Director has ordered him that the

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applicant must not be permitted to enter the office but the applicant should see Sri B.L.Deogan.

4-15- That on 31/8/88, the said Janjati Samiti also made a complainant against the arbitrary, mala fide, and illegal action of the Opp. Party no. 2 to the Hon'ble Prime Minister of India, stating that opp. party no. 2 has orally terminated the services of daily rated labourer Sri Prem Shanker. A true photostat copy of the complaint dated 31/8/88 is annexed as Annexure-4 to this application.

4-16- That it is to be noted that the Prime Minister's Office took favourable action and vide letter office letter dated 21/10/88, the section officer informed the applicant that ^{for} suitable action, ^{his} representation has been sent to Postal Mantralay [&] New Delhi. A true photostat copy of the Prime Minister's Office letter dated 21/10/88 is annexed as Annexure-5. While the applicant is also annexing the letter dated 7/11/88 of the Addl. Private Secretary of Sanchar Rajya Mantri as Annexure-6.

4-17- That the applicant now has lost hope from all corners and as such he felt to approach to this Hon'ble Court for redress ^{at}, after moving his lost representation dated 3/1/89 which is Annexure-7 to this application.

9/2/89

4-18- That the applicant has put in near about five years service as daily rated labourers without any complaint and there has been no break up in the service ^{since} the year 1985 which proves his 'temporary' status and his claim for regularisation on his post.

4-19- That the services of the following similarly situated daily ^drated labourers working in the postal department in Lucknow have been regularised on putting 240 days :-

- | | |
|---------------------|----------------|
| I- Sri Jamil Ahmad | II- Sri Naseem |
| III- Sri Kamal Khan | IV- Sri Latif |
| V- Sri Sita Ram. | |

4-20- That it would be not out of place to mention that the selection of the above persons was held alongwith the applicant on 20/12/83.

4-21- That under Rule II of the Central Civil Services (C.C.A.) Rules 1965, it is clearly provided that the Govt. Servant does not join duty by the stipulated date, it would be open to the disciplinary authority to institute disciplinary proceedings against him.

The question of regularisation of the period of overstayed ^{of} leave be left over for consideration till the finalisation of the disciplinary proceedings.

उपस्थित

That the opp. party no.2 has flouted the G.O. dated 12/9/86 issued by the Ministry of Personnel, Union of India according to which the employees belonging SC/ST should not be subjected to harrassment and discrimination. A true photo-stat copy of the G.O. dated 12/9/86 is being filed as Annexure-8.

That Rule II says that however, the disciplinary authority should consider the grounds adduced by the Govt. Servant for his unauthorised absence before initiating disciplinary proceedings.

4-22- That there is statutory requirement that major punishment can not be enforced without proper disciplinary proceedings as prescribed.

That in the case at hands the applicant was proceeded on three dsys casual leave with the permission of Opp. Party no. 2 and had informed him about his sister's marriage.

4-23 That the applicant on resuming his duty had explained to the opp. party no. 2 the reasons about the delay, ~~although~~ although the wages for those days were to be deducted and not to be paid due to the daily rated labourers

4-24- That the applicant is advised to state that casual or seasonal workmen who rendered continuous service for one year or more can not be retrenched without complying with the requisites of

S-25 of the Industrial Dispute Act.

प्रमाणित

§-(26)- That it is settled law that justice must be tempered with mercy and that the errands workman should be given an opportunity to reform himself and to prove to be loyal. But it appears that the same has not been done as the applicant is a scheduled caste and from the above it indicates that high castes persons who were selected alongwith the applicant has been regularised and that his right to livelihood has been snatched away by opp. party no.2, arbitrarily, malafide, and the action of opp. party no. 3 is for collateral purpose with oblique motive which is his colourable exercise of powers of opp. party no.3 .

§- (26)- That opp. party no. 2 can not/ could not take away the services of the applicant on the ground of overstaying after permissible time and the major punishment by means of oral order of Termination awarded to him is bad in law.

§- (27)- That at the time of Termination of services , the applicant who being paid monthly wages 750/- + D.A..

§ Details of Remedies:-

The applicant declares that he has availed of the remedy available to him.

II)- The applicant against oral order of termination dated 18/7/88 made represen-

§ 21 on 2

-tation 22/8/88 to the Director Postal
(Accounts) ^{to} (A-3) and last representation
dated 3/1/89 to the Deputy Director Postal
(Accounts), U.P. Lucknow (A-7).

6- . Matters Not previously filed or pending
other courts.

The applicant further declares that he
has not previously filed any application,
writ petition or suit regarding matter in
respect of which this present application
has been made before any court of law or
any other authority or any other branch
of the Tribunal, and not any such applica-
tion writ or suit is pending before any one
of them.

7- Reliefs Sought :-

That the applicant in view of the above
prays for the following reliefs.

- (a)- Necessary orders may kindly be issued
to respondents to allow the applicant
to continue on the post of IVth class
daily rated labourer in the office of
the Opp. Party no. 2 treating him to be in
continuous service and to pay him arrears
entitled to get alongwith other benefits,
consquential benefits etc.

- (b)- To quash the oral order of Termination
dated 18/7/88 given by the Opp. Party

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-II-

no.-2 in his office and restraining him from functioning his duty.

- C)- To declare the oral Termination order given by Opp. Party no. 2/^{on 4}18/7/88 as illegal, arbitrary, unconstitutional, and ^{by}bad in law.

8.

G_R_O_U_N_D_S

9-(I)- Because the oral order of Termination restraining applicant from duty is unjust, unfair arbitrary, discriminatory, malafide and violative of principle of natural justice.

(II)- Because after putting ~~a~~ four years continuous service as daily rated labourer in the postal department, the applicant acquired temporary status ~~as~~ who is liable to be ^{be}absorbed and regularised on the ground that similarly situated persons as mentioned in para.5-19 ^{be} have been regularised.

(III)- Because Termination on the ground of over-stayed ^{be}from duty amounts ^{to be} punishment and the provisions of Article 311 are attracted.

गैरअनुचित
(IV)- Because absence without leave constitutes misconduct and the employer can not termination ^{be} the services of the employee without enquiry and complying the principles of natural justice.

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(V V)- Because the applicant had not proceeded on three days casual leave without permission of opp. party no. 2 who at the time of according permission had told him that the applicant might go on leave in connection with his sister's marriage and for this period the applicant's wages will be deducted ^{the automatically} from his monthly wages.

(VI)- Because there is clear violation of Rule 14 of the Central Civil Services (classification-Central and Appeal Rules) according to which no order of imposing penalties specified in clause (V) to (IX) of Rule II, shall be made except after an inquiry is held under the Act.

(VII)- Because even casual or seasonal workman who rendered continuous service for one year or more can not be retrenched without complying with the requisites of Sec. 25-F of the Industrial Dispute Act.

(VIII)- Because the applicant had proceeded on casual leave for genuine cause and bonafide and even if the opp. party no. 2 was not satisfied he could award any minor punishment instead of severe major punishment.

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IX)- Because the applicant has been denied protection of Art. 311(2) of the Constitution.



(X)- Because termination of applicant's services orally without restoring disciplinary proceedings is bad in law and illegal.

XI)- Because the opp. parties ought to have taken into consideration that the Govt. Servant should desist from any act of discrimination and officials to SC/ST should not be subjected to discrimination and harassment in view of the G.O. No. 42014/7/86-Estt. (SCT) dated 12/9/86 issued by Ministry of Personnel, Union of India.

XII)- Interim Order if any prayed for pending final decision on this application.

The applicant may kindly be issued interim order directing the opp. parties not to give effect to the oral order of Termination dated 18/7/88 given by the Opp. Party no. 2 and the respondents be directed to allow the applicant under the order of this Hon'ble Court to work on his post of daily rated labourers without any interference and he may be paid monthly wages regularly.

IX)- Not applicable.

X)- Particulars of the Indian Postal Order in respect of Application

I)- Indian Postal Order No. ²³ R 229-AA 240953
²³ R 228-AA 240954
dated 19th May...1989 III R 210-6 06999413

II)- Issued by High Court Post Office, Lucknow.

पुनर्निर्माण

13. List of documents

Annexure-I

Annexure-2

Annexure-3

Annexure-4

Annexure-5

Annexure-6

Annexure-7

Annexure-8

Verification

I, Prem Shanker, abovenamed presently posted
as x x x x x Gradex x x x Assistant x x Engineer x x Office
x x x x x Raizabad orally terminated Daily rated
labourer of Director Postal(Accounts)U.P.
resident of House no.554,Kha/69,Bisheswar Nagar,
Alambagh,Lucknow,do hereby verify that the
contents of paras i, 2, 5 to 5-20, 5-23, 5-27, 6
7, 8, 10, and 13

-----are true to
my personal knowledge, those of 3-14, 5-21, 5-22,
5-24 to 5-26, bona 9, 11, -----

are true to my belief and legal advice and
I have not suppressed any material facts.

Lucknow dated:

May 22, 1989

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Signature of Applicant

(Qamrul Hasan)
Advocate

Counsel for the applicant

To

The Registrar,
Central Administrative Tribunal,
Addl. Bench, Allahabad.

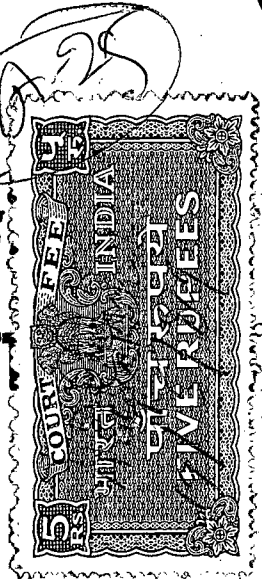
गणित

In the Central Administrative Tribunal
बअदालत श्रीमान Circuit Bench Lucknow मह.

वादी (मुद्दै)
मुद्दै (मुद्दालेह)

का

वकालतना



Application No. of 1989

From Shankar

Applicant

The Director Postal Accounts,
and others

VS

बनाम

प्रतिवादी (रिस्पान्डेन्ट)

नं० मुकद्दमा

सन

पेशी की ता०

१९

ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

RAMRUL HASAN वकील
Mohd. Fatchuddin एडवोकेट

महोदय

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

नाम अदालत
नं० मुकद्दमा
नाम फरीकन

Accepted
Ramesh
18/5/89

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १९

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In the Central Administrative Tribunal, Addl. Bench,
Allahabad, Circuit Bench, Lucknow.

* . Application no. 184 of 1989 (L).

Sri Prem Shanker

....Applicant

Versus

The Director Postal (Accounts, U.P.
and others

Respondents

I n d e x

Sl.no.	Particulars of documents	Pages
I.	Annexure-I (Call letter dt. 2.12.83)	15
2.	Annexure-2 (Complaint dt. 22.8.88 to) P.M.G by the Union	16
3.	Annexure-3 (Representation dt. 22.8.88) to O.P.no.I	17-19
4.	Annexure-4 (Complaint to Prime Minister) of India dt. 31.8.88 by Union regarding oral termination of the applicant.	20
5.	Annexure-5 (Letter dt. 21.10.88) of P.M.'s office.	21
6.	Annexure-6 (Letter dt. 7.11.88) of Addl. Private Secretary.	22
7.	Annexure-7 (Representation dt. 3.1.89)	23
8.	Annexure-8 (G.O. dt. 12.8.86 by U.O.I) regarding discrimination.	24

(Qamrul Hasan)

Advocate

Lucknow dated:
May 22, 1989

Counsel for the applicant

Before the Hon'ble Central Administrative Tribunal
Addl. Bench, Allahabad
Circuit Bench, Lucknow
Application No. of 1989
Prem Shankar Applicant
V/S
Director Postal (Accounts) U.P. Circle
Lucknow & Others Respondents
Annexure No. /...

OFFICE OF THE DIRECTOR OF ACCOUNTS (POSTAL)
U.P. CIRCLE, LUCKNOW- 226018.

No: G.S./Daily Wagers. 376

Dated. 9.12.83.

Shri . . . प्रेम शंकर is hereby
informed that his name has been sponsored by Employment Exchange
for the engagement of daily rated majdoors. He is, therefore,
directed to appear before the Selection Committee for determining
his suitability for working as a daily rated majdoor (i.e. casual
labourer) along with his testimonials at the above noted address
on 20.12.83/21.12.83/22.12.83 at 11.00 A.M. sharp. No travelling
allowance will be paid for this purpose.

Accounts Officer 2/12
(G.S.)

Copy to Shri प्रेम शंकर . . .

दिनांक १२/१२/८३, मां.नं. ५५५, रव/१०
विशेषज्ञ, जं.र. कां.ल.कां.ग. लु.कां.ग.

Accounts Officer,
Postal Accounts, Lucknow

K.UDDIN

प्रेम शंकर

पु.म.शं.ला.

Before the Hon'ble Central Administrative Tribunal
Addl. Bench, Allahabad
Circuit Bench, Lucknow
Application No.of 1989
Prem ShankerApplicant
V/S
Director Postal (Accounts) U.P. Circle
Lucknow & OthersRespondents
Annexure No. 3...

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मेरे नाम से

श्री अशोक कुमार महोदय,
निदेशक डाक जेलगा,
लखनऊ

विषय:- दैनिक भौगी कर्मचारी ।

श्रीमान जी,

मे प्राधान्य प्रेम शंकर आपके कार्यालय में पिछले लगभग 5 साल के से बतोर दैनिक भौगी कर्मचारी के रूप में काम करता रहा हूँ मैं इम्प्लायमेंट एक्चेंज द्वारा बुलाया गया था और डी०पी०सी० । द्वारा मेरा वयस 1983 में हुआ था ।

मैं मैट्रिक पास हूँ । मैं अनुसूचित जनजाति से सम्बन्ध रखता हूँ भारत के संविधान के अनुसार सौलह, चार, तीस के अनुसार भारत सरकार एवं राज्य सरकार में अनुसूचित जाति के लिये मौकियाँ तैयार किये गये हैं पर अनुसूचित जाति एवं अनुसूचित जनजाति के लिये स्थान अरुणित किये हैं

भारत को स्वतंत्र हुये 40 साल हो गये हैं परन्तु अनुसूचित जाति का प्रतिनिधित्व-----रहता है।

श्रीमान जी मैं बड़े पित के साथ आपके नौटिस में लाना चाहता हूँ कि 11 तारीख को मेरी छोटी बहन की शादी थी मैं अपने अधिकारी श्री बीरबहादुर देव गन की झिती की मेरी बहन की शादी है और मुझे सादी में शामिल होनी थी उसके बाद अधिकारी महोदय किसी काम से दफ्तर के बाहर चले गये मेरे मेरे अपने अजीबान श्री पी०पी० देव गन के साथ के नीचे रहा दी ताकि जब वह आते तो इसको देखा ले और मुझे छुट्टी मिल सके। मेरी बहन की शादी के दौरान ही मेरे बच्चे की हालत गम्भीर हो गयी और मुझे 5 या 6 दिनों तक घर में रुका पड़ा मैं 18 तारीख को अपनी रिपोर्ट दी मेरी हेरानी और परेशानी की छ हो गयी जब मुझे श्री देव गन ने छुट्टी पर नहीं लिया और मुझे कहा कि मेरे आपकी जगह आदमी रखा लिया है मैं भागा-भागते दफ्तर आया और केसर देकर महोदय

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मे मिला और वो मुझे छिप्टी डाइरेक्टर महोदय के पास ले गये और छिप्टी डाइरेक्टर साहब ने मुझे बहुत डाँटा और मे लगातार उनको बिजली करता रहा फिर मुझे कहा गया कि हममे हमने 15 दिन के लिये आदमी रखा है मे 26 तारीख को पुनः दफ्तर आया और केयर टेकर को रिपोर्ट किया जब केयर टेकर वापस आया तो उसने बताया छिप्टी डाइरेक्टर महोदय ने आदेश दिया कि मुझे दफ्तर के अन्दर न घुसने दिया जाये और केयर टेकर ने कहा कि मे श्री बी०एल० देवत के पास जाऊ और मे श्री बी०एल० देवत महोदय के पास गया तो उसने मुझे कहा कि मेने उसके अभा 15 दिन नहीं हुये जबकि 11 तारीख से 25 तारीख तक 15 दिन हो गये थे।

श्रीमान् जी मे एक गरीब आदमी हूँ और पिछले 5 साल से इस कार्यालय मे कार्य करता रहा हूँ मे अनुसूचित जनजाति से सम्बन्ध रखता हूँ मुझे बात पता है कि दफ्तर खुले हुये 18 साल हो गये है आज तक एक भी अनुसूचित जाति का आदमी क्लास 4 मे भर्ती नहीं हुआ जबकि सैकड़ों आदमी क्लास फोर मे भर्ती हुये है मे जब भारत के 40 साल के इतिहास पर नजर मारता हूँ तो मुझे ऐसा लगता है कि भारत मे संविधान मे दी हुई सुविधाओं का मजाक उड़ाया जा रहा है जो आदमी अनुसूचित जाति के आदमियों ने उनके एक से कचित् रगाने मे जुम्मेदार रहे है और उन्होंने सरकार के बनाये हुये नियमों की अवहेलना की है उनको कोई सजा नहीं मिली बल्कि मे लोग अनुसूचित जनजाति के लोगों को किसी न किसी बहाने से उनको नौकरी से दूर रखने मे उपयोगी सिद्ध होते रहे है।

श्रीमान् जी उसी सिलसिले मे मेरे साथ भी एक ऐसी साजिश हो रही है और मेरे अलावा काली महोदय मुझे नौकरी से निकाल कर किसी अन्य आदमी को उच्च जाति के लोगों को भारने का काम हाइलान्त कर रहे है।

श्रीमान् जी मे मेरी कुछ निवेदन है कि मुझे मेरा हक दिलाया जाय और मुझे अक्लमब झूटी पर लिया जाय

प्रस्ता

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राजीव गांधी जिलावाद ।
स्थापित वर्ष : १९८६

हरिद्वार गांधी जिलावाद ।

डा० प्रमोद कुमार शर्मा ।
स्थापित वर्ष : १९८०

उत्तर प्रदेश थाक एवं दिमुक्त जनजाति समिति

मुंगी गोपनी, इन्ड्रलोक कालीनी, कुलनामगर, लखनऊ-५

संचालक : कुपार्जकर मिहू बाक

सुतपूर्व महाभागी उत्तर प्रदेश कायिक कमेटी लाई० डिनाटीकाइड डाक ठेका
१०, बाक एवेन्यू, मेहक बंगला, लखनऊ

कार्यकर्ता : आरंभ सेवाधन, लखनऊ

पत्रांक

दिनांक ३१-१२-८९

१. वजनाथ तिवारी एडवोकेट [प्रबन्धक]
२. जोषरी प्रेमचन्द [शा. अध्यक्ष]
३. रवीन्द्र कुमार [कोषाध्यक्ष]
४. गोवर्धन प्रसाद [उपाध्यक्ष]
५. दुमारे भारती [सचिव]
६. देवेन्द्र कुमार [उपसचिव]
७. अनिरुद्ध प्रसाद [वित्तप्रकार]
८. राजेश कुमार एडवोकेट [वित्त सलाहकार]
९. भागीरथ बाक [संगठन प्रभारी]
१०. विजय प्रसाद
११. सुभाष प्रसाद
१२. श्रीकृष्ण
१३. देवम प्रसाद [अध्यक्ष]
१४. डा० सुदीपलाल
१५. सत्य प्रसाद
१६. उपमराय
१७. रामदास

सेवा में,

माननीय श्री प्रधान मंत्री राजीव गांधी
भारत सरकार, नई दिल्ली।

विषय: अनुसूचित जनजाति के दैनिक वेतनभोगी कर्मचारी जो पाँच वर्ष से लगातार निदेशक डाक लेखा कार्यालय अमीनाबाद लखनऊ में कार्य कर रहा था को दिनांक ११-७-१९८८ से बिना कारण बताये, सेवा से मुक्त कर देने के संबंध में।

महोदय,

निवेदन यह है कि श्री प्रेम शंकर जो कि ३० जनजाति का है और गत ५ वर्षों से लगातार दैनिक वेतन भोगी कर्मचारी के रूप में निदेशक डाक लेखा कार्यालय अमीनाबाद लखनऊ में कार्य कर रहे थे को अचानक बिना कारण बताये दिनांक ११-७-१९८८ को देश भ्रमना से असहयोगिता तारीके से एवं हरिजन विरोधी भावनाओं के कारण उसी कार्यालय के अधिकारियों ने निकाल दिया है। और इनके स्थान पर कार्यालय के ही एक कर्मचारी के भतीजे को कि उच्च जाति का है को इस आरक्षित पद पर रोजगार कार्यालय लखनऊ से बिना नामांकित हुए रख लिया है।

महोदय इस प्रकार उपरोक्त आरक्षित पद को समाप्त परके संविधान एवं भारत सरकार के प्राविधानों और विभिन्न आरक्षण आदेशों का पूर्ण आम उल्लंघन किया है।

जैसे कि माननीय प्रधानमंत्री जी समय-2- पर सभी मंत्रालयों और विभागों को निर्देश देते रहते हैं कि अनु० जनजाति के कर्मचारियों को साथ किसी भी स्तर पर उनकी सामाजिक स्थिति के कारण भेदभाव न किया जाए एवं उनके आरक्षित पदों को तत्काल भरा जाए परन्तु निदेशक डाक लेखा कार्यालय में दैनिक वेतन भोगी के कुल १५ पदों में निगमानुसार दो जनजाति के कर्मचारी होना चाहिए परन्तु आरक्षित पदों को न भर करके जो एक पद भरा भी था उसको भी समाप्त कर दिया है इस प्रकार गुप्त डी फैडर में अनु० जनजाति में आरक्षण शून्य कर दिया गया है। अतः मा० जी से निम्न निवेदन है कि उक्त दैनिक वेतन भोगी कर्मचारी जिसके लिये तथा बड़े गाँव बाप भूखों भर रहे हैं को पुनः सेवा में रखने के लिए शीघ्र प्रतिपत्ति प्रदान करने की कृपा करें ताकि प्राचीन अपने बच्चों की जीविका चला सकें।

मुझे आशा ही नहीं बरन पूर्ण विश्वास है कि आप मेरी प्रार्थना पर उचित कार्यवाही करके इस गरीब जनजाति व्यक्ति को रोजी रोजी का एक गहारा दिलायेंगे।

आदर एवं सम्मान सहित,

प्रमोद कुमार शर्मा

प्रेम शंकर

उत्तर प्रदेश थाक एवं दिमुक्त जनजाति समिति
मुंगी गोपनी, इन्ड्रलोक कालीनी, कुलनामगर, लखनऊ-५
संचालक : कुपार्जकर मिहू बाक

Before the Hon'ble Central Administrative Tribunal
Addl. Bench, Allahabad
Circuit Bench, Lucknow
Application No.of 1989
Prem ShankarApplicant
V/S
Director Postal (Accounts) U.P. Circle
Lucknow & OthersRespondents
Annexure No. 5..

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प्रधान मंत्री कार्यालय
PRIME MINISTER'S OFFICE

नई दिल्ली-110011
NEW DELHI-110011

पत्र सं. 29/553

दिनांक 21/5/88

प्रिय महोदय/महोदया,

मुझे निदेश हुआ कि प्रधान मंत्री जी को सम्बोधित
आपके पत्र दिनांक — की प्राप्ति सूचना आपको हूँ और
सूचित करूँ कि यह पत्र उचित कार्यवाही के लिए S/क
मंत्रालय, नई दिल्ली को भेज दिया गया है।

डॉ. प्रेमशंकर शर्मा (आचार्य)

मकान नं० 554 ख/69, विश्वेश्वर नगर

आलमगढ़, लखनऊ (उ०प्र०)

भवदीय,

अनुभाग अधिकारी

प्रेमशंकर

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Before the Hon'ble Central Administrative Tribunal
Addl. Bench, Allahabad
Circuit Bench, Lucknow
Application No.of 1989
Prem ShankarApplicant
v/s
Director Postal (Accounts) U.P. Circle
Lucknow & OthersRespondents
Annexure No. 6...



यू० के० मित्रा

अतिरिक्त निजी सचिव
संसार राज्य मंत्री
भारत

ADDITIONAL PRIVATE SECRETARY
MINISTER OF STATE FOR COMMUNICATIONS
INDIA
NEW DELHI-110001

7 नवम्बर, 1988

प्रिय श्री सिंह जी,

आपका दिनांक 12 अक्टूबर, 1988 का पत्र संलग्नक सहित प्राप्त हुआ, जिसमें आपने अनुसूचित जनजाति के श्री प्रेम शंकर, दैनिक वेतन भोगी कर्मचारी, निर्देशक डाक लेखा कार्यालय अमीनाबाद, लखनऊ को बिना कारण बताये सेवा से मुक्त किये जाने के सम्बन्ध में लिखा है।

आपका पत्र उचित कार्यवाही हेतु सम्बन्धित अनुभाग को भेज दिया गया है।

सादर,

आपका,

यू० के० मित्रा
यू० के० मित्रा

प्रेम शंकर

श्री कृपाशंकर सिंह थारू,
संयालक 830 90 थारू एवं विमुक्त-
जनजाति समिति
हुगली झोपड़ी, इन्द्रलोक कालोनी,
कृष्णानगर,
लखनऊ-5

Before the Hon'ble Central Administrative Tribunal
Addl. Bench, Allahabad

Circuit Bench, Lucknow

Application No.

.....of 1989

Prem Shankar

.....Applicant

V/S

Director Postal (Accounts) U.P. Circle

Lucknow & Others

.....Respondents

Annexure No...7.

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A3

सेवा में,

श्रीमान डिप्टी जस्टिस,
उत्तर प्रदेश सर्विल,
लखनऊ।

विषय :- बैंक भागी कर्मचारी के पद पर नियुक्ति करने के सम्बन्ध में।

महोदय,

निवेदन है कि प्रार्थी प्रेम शंकर आपके अधीनस्थ कार्यालय में पिछले लगभग पाँच वर्ष से ज्योत बैंक के भागी कर्मचारी के रूप में कार्य करता रहा है। प्रार्थी सेवायोजन कार्यालय द्वारा बुलाया गया था और डी०बी०सी० द्वारा प्रार्थी का चयन 1983 में हुआ था। प्रार्थी हाईस्कूल पास है प्रार्थी अनुसूचित जनजाति का सदस्य है प्रार्थी 11 जुलाई 1988 को प्रार्थी की बहन की शादी थी प्रार्थी अपने अधिकारी श्री ए०बी० बी०एल० देवगन से फूट्टी लेकर घर गया था। प्रार्थी 18 जुलाई को साप्ताहिक गया तो उन्हें इधर पर नहीं लिया गया और एम० आ० महोदय श्री बी०एल० देवगन ने मुझे कहा कि आपके जगह पर मैंने दूसरा आदमी को रख लिया है प्रार्थी बेरोजगार है प्रार्थी के जीविका का कोई दूसरा साधन नहीं है प्रार्थी अपने बच्चों को दो वक्त की रोटी देने में अत्यन्त कठिनाइयों का सामना करना पड़ रहा है।

अतः श्रीमान जी से प्रार्थना है कि प्रार्थी के इस वैसीय दशा को ध्यान में रखते हुए आप अपने स्तर से उचित कार्रवाई कराकर प्रार्थी को नियुक्ति दिलाने का कष्ट करें। ताकि प्रार्थी अपने बच्चों का पालन पोषण कर सके। इसके लिए प्रार्थी सतत तौर पर आपका आजीवन आभारी रहेगा।

प्रार्थी,

प्रतिश्रुति !

दीन कर्मान भोगी कर्मचारी,
निदेशक डाक सेवा कार्यालय,
अमोनाबाद, लखनऊ।

घर का पता:-

प्रेमशंकर द्वारा श्री नारायण
मो 554 ए/69 बिल्डिंग नगर,
आलम बाग, लखनऊ।

RL-00
181 SL
18-1-89

To
Received
Lucknow
5-1-89
(प्रम. शंकर)

प्रम. शंकर

In the Hon'ble Central Services Tribunal Addl. Bench Allahabad
Circuit Bench, Lucknow

Applicant No.

..... of 1989

Prem Shankar

....Applicant

Director Postal (Accounts)

U.P. Circle & Other

.....Respondents

Annexure 8

No.42014/7/85-Estt (SCT)

Government of India/Bharat Sarkar

Ministry of Personnel, Public Grievances
and Pensions

(Department of Personnel and Training)

.....

New Delhi, the 12 August, 1986

OFFICE MEMORANDUM

Subject:- Harassment of and discrimination against Scheduled
Castes and Scheduled Tribes employees in Central
Govt. Services/Posts.
.....

The undersigned is directed to say that in the
Department of Personnel and Training's O.M.No.36085/3/85-
Estt (SCT) dated the 24th June, 1985, it is emphasised that
Government servants should desist from any act of discrimi-
nation against members of Scheduled Castes/Scheduled Tribes
Communities on grounds of their social origin.(copy enclosed).

2. It has come to notice that the contents of the
O.M. referred to above dated 24th June, 1985, has not received
wide publicity. It is once again emphasised that in order to
achieve the objective of the Government to uplift officials
belonging to the SC/ST socially and to merge them in the
mainstream of the national life, it is absolutely necessary
that the officials belonging to SC/ST are not subjected to
any harassment or discrimination.

3. Ministry of Finance are requested once again to bring
the contents of O.M. dated 24th June, 1985 referred to above
to the notice of concerned and action taken against officials
who violate the instructions.

Sd/-

(BATA K. DEY)
DIRECTOR

SLA

3-40, Mirzanagar,
Lucknow.
8. Notice Board.
9. Guard File.

(SHUPENDER NANGIA)
SECTION OFFICER
12/11/86

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW
C.M. No. 316/1989 (S)
O.A. NO. 114 of 89 (L)

Prem Shankar

... Applicant

-vs-

Union of India and others ... Opp. parties.

Application for grant of time for filing
counter affidavit.

The opposite parties beg to submit as
under:-

1. That the reply/counter affidavit is under
preparation and will take at least four weeks
and the opposite parties are required 4 weeks
for filing their counter affidavit in the interest
of justice.

2. Wherefore it most respectfully prayed
four weeks time may be granted to the opposite
for filing their counter affidavit/reply in
the noted case.

(VK Chaudha)
Addl. Standing Counsel for
Counsel for the Opp.

Lucknow,

Dated: 10/11/89 Nov. 1989.

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16

Filed today

10/11/89

VAKALATNAMA

In the Hon'ble High Court of Judicature at Allahabad

At

Lucknow Bench

Prem Shanker Plff./Applt./Petitioner/Complainant

Verses

Union of India & others Defent./Respt./Accused

KNOW ALL to whom these presents shall come that I/We
the above-named app. Karle do hereby appoint

Shri V. K. CHAUDHARI, Advocate,
..... High Court, Lucknow Bench

(hereinafter called the advocate/s) to be my/our Advocate in the above-noted case and authorised him :—

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each Court by me/us.

To sign, file, verify and present pleadings, appeals, cross-objections or petitions, executions, review, revision, withdrawal, compromise or other petitions or affidavits or documents as may be deemed necessary or proper for the prosecution of the said case in its stages.

To file and take back documents, to admit &/or deny the documents of opposite parties.

To withdraw or compromise the said case or submit to arbitration any difference or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings.

To deposit, draw and receive moneys, cheques, cash and grant receipts therefor to do all other acts and things which may be necessary to be done for the progress and course of the prosecution of the said cause,

To appoint and instruct any other Legal Practitioner authorising him to exercise power and authority/herby conferred upon the Advocate whenever he may think fit & to sign the power of attorney on our behalf.

And I/we the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us at all hearings & will inform the Advocate for appearances when the case is called.

And I/we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain for himself.

And I/we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. This is only for the above case and above Court I/we hereby agree that once the fees are paid I/we will not be entitled for the refund of the same in any case whatsoever.

IN WITNESS WHEREOF I/we do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this day of 19

Accepted subject to the terms of fees.

Client

Client

Advocate

Accounts Officer (SR-AG)

लेखाधिकारी

Administration - I

प्रशासन - प्रथम

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

O.A. NO.114 of 89(L)

Prem Shanker

... Applicant

-vs-

Union of India and others

.. Opp. parties

COUNTER AFFIDAVIT ON BEHALF OF OPP. PARTIES.

I,

S. R. Abidi

aged about 54

years, son of Late Tamizul Hasban
Accounts Officer Admin. I O/o
at present posted as Director of Accounts (Postal)

UP Circle, Lucknow do hereby solemnly affirm and
state as under:-

1. That the deponent has been authorised
to file this counter affidavit on behalf of opposite
parties.
2. That the deponent has read the application
filed by the applicant and has understood the contents
thereof and is fully conversant with the facts stated
in the application and he is in a position to give
parawise comments as hereinunder:



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3. That before giving parawise comments it is necessary to give brief history of the case as under:

(a) That the office of the Director of Accounts (P), Lucknow is at present functioning in three different building in Lucknow. The main building is at Aminabad, the secibd at k9, Way Road, Lucknow and the third one at New Hyderabad. In addition to officers and Group 'C' staff, there are group 'D' staff also. (for example peons, chaukidars, sweepers and daftaries). There has been shortage of various categories of staff including that of Group-'D' in this office from time to time. Apart from this office, the quantum of work is increasing occasionally in this office. Some time the Group-D staff proceeds on leave on ~~permanent~~ personal grounds or illness. The work of Group-D staff during their absence on this account is managed by engaging Mazdoors for a day or so, or for a longer period, as the case may be on the basis of daily-wages rates. Whenever a Daily wager is required

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for a day or so, arrangement of Daily-wager is made from the local market. Whenever the services are required for a longer period, the list of casual labourer is obtained from the Employment Exchange and such labourers known as casual labourers are engaged in this office after judging their fitness. The name of Shri Prem Shanker the applicant was forwarded by the local Employment Exchange and he was engaged as a Daily-rates Mazdoor with effect from 20.12.83.

(b) That the engagement of casual labourers are different from those regularly employed Group-D staff. The regular Group D staff is covered under the CCS(Conduct) Rules or CCS(Temporary Service) Rules. Their appointment and termination of service are made under certain rules prescribed by the Govt. rules and regulations. Whereas engagement of daily rated mazdoor is not covered under CCS (Conduct) Rules or temporary rules whose casual engagement is subject to good work, good behaviour and good health and they are paid wages at daily-rated for the days they are engaged.

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(c) That the office of the deponent is a very big office employing about 800 officials in the different buildings in Lucknow. We require Daily rated Mazdoors for work of casual nature ie. for lifting of bags, removal of furnisture etc. It will not be out of way to mention here that on many occasions depending upon the exigencies of the work, as many as 15 to 20 d daily rated mazdoor on a particular day are engaged. The daily rated Mazdoors are engaged on daily basis depending upon the requirements Shri Prem Shanker, the applicant as and when he was readily available and there was work for him he was engaged as daily rated Mazdoor.

(d) The applicant was found to be habitual of being absent when an exigency of work arose while working in NSC section at 19 Way Road, Lucknow. It happened so that one Shri DDS Chauhan, regular Chowkidar was on leave with effect from 30.6.88 and the work of chaukidar was managed by Daily rated mazdoor. The applicant was absent on 11.7.88 and onward without any information/permission of the office. The work of the Chaukkdar is

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such that it can not be pulled on without employing a substitute in absence of anyone working there. So another daily rated mazdoor was got engaged against the applicant with effect from 11.7.88.

(f) That the work and behaviour of the applicant was not found upto the mark. The applicant did not behave properly with his supervisors while working in the office as Daily Rated Mazdoor, nor he carried in his work with full devotion and loyalty for which he was warned verbally by his supervisors but of no use. The Applicant entrusted to guard the building has allowed unauthorised persons in enter the premises of the office which has caused nuisance in the office and disrupted the work. This has been confirmed by the applicant in writing on 28.4.88.

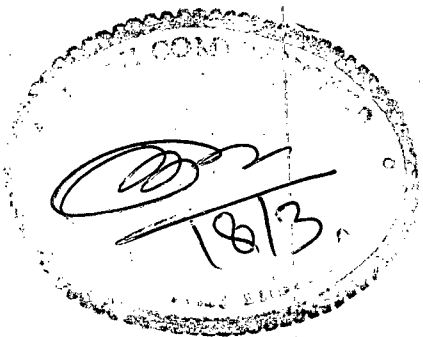
(f) That the applicant has made the application with the Hon'ble CAT since he was a daily rated mazdoor and the prescribed rules namely the CCS(Conduct) Rules and the CCS(CCA) Rules are not applicable to him. No disciplinary action can be taken against a daily-rated mazdoor unlike a regular appointed Govt servant. He had been paid waged for the number of days he worked. No leave etc. was granted to him and no wages for Sundays and holidays were paid to him. The daily ~~da~~ rated mazdoor is not a Government servant as such the Hon'ble CAT has no jurisdiction to admit th

instant application.

(g) That the appointment of regular Group-D officials is made from amongst the Daily-Rated Mazdoor who have got good record of performance. The appointment is made after holding a DPC. The DPC recommends those cases in which the daily rated Mazdoors are upto the mark and loyal to their work. Accordingly case of persons like the applicant can not be recommended by the DPC in future also, as the person has been totally found unfit for the Government job, and he does not fulfill the conditions by remaining absent from work since 11.7.88.

4. That in reply to the contents of para 1 to 3 of the application for formal and informatory and as such need no comments.

5. That in reply to the contents of para 4.1 of the application it is submitted that the applicant was engaged for the day there was work on the basis of daily-rates-mazdoor who are not governed by any service rules namely - CCS(CCA) Rules or CCS(Conduct) Rules. As the applicant absented himself with effect from 11.7.88 and the work could not be managed without engaging a substitute, so a daily rated-mazdoor was engaged.



for the day there was work on the basis of daily rated mazdoor who are not covered by any service rules namely CCS(CCA) Rules or CCS (Conduct) Rules. As the applicant absented himself with effect from 11.7.88 and the work could not be managed without engaging a substitute, so a daily-rated-mazdoor was engaged. The applicant who was not governed by any service rule was not supposed to be informed in writing when he, by absenting himself, without any information/permission, again turned up for work on 18.7.88, the Caretaker had correctly informed him with the facts.

6. That in reply to the contents of para 4.2 of the application it is submitted that no qualifications are required for daily rated mazdoor.

7. That the contents of para 4.2 of the application needs no comments and in reply it is submitted that the applicant confirmed that he was engaged as daily rated mazdoor in his application.

8. That the contents of para 4.4. of the application are incorrect, hence denied and in reply it is submitted that the applicant a dilay rated mazdoor whose name was sponsored by the local Employment Exchange in Dec. 1983 eith effect from 20.12.83 and to say that he joined service in Dec. 1983 is not correct as the applicant was not engaged on regular basis as he was engaged as daily-rated-mazdoor for doing work of casual nature. Thus he was not governed by any service rules but to be paid

wages on the basis of rates prescribed for the daily-rated-mazdoor for the day he was engaged.

9. That in reply to the contents of para 4.5 of the application it is submitted that the daily wages paid to daily rated mazdoors was Rs.7.95 per day at the time of engagement of the applicant and Rs.28.55 per day in the year 1988 in his case.

10. That the contents of para 4.6 of the application are incorrect as stated, hence denied and in reply it is submitted that the applicant was engaged as daily rated mazdoor on the availability of work.

& 4.8

11. That the contents of para 4.7 of the application are incorrect as stated, hence denied and in reply it is submitted that the applicant absented as daily-rated mazdoor on the availability of service and he himself absented himself without information. He was habitual absentee.

12. That the contents of para 4.9 of the application needs no comments in view of the comments given against para 4.1 of the application as above.

13. That the contents of para 4.10 of the application are incorrect as stated, hence denied and in reply it is submitted that the opposite party no.3 on account of his caste feelings engaged

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another person in his place but it was due to exigencies of work which necessitated the engagement of another substitute immediately. Allegations are baseless and imaginary.

14. That in reply to the contents of para 4.11^{& 4.12} of the application it is submitted that the representation so received was examined and rejected as the action taken in this regard by the office of the deponent was found justified and all concerned were informed suitably.

15. That in reply to the contents of para 4.13 of the application it is submitted that the allegations made in this para are baseless and false, having imaginary thoughts only.

16. That the contents of para 4.14 of the application are irrelevant, hence needs no comments.

17. That in reply to the contents of para ~~4.15~~ 4.15 of the application it is submitted that no such representation appears to have been received ~~at this~~ in the office of the answering Opp. party. Applicant himself confirmed that he was daily rated mazdoor for whom question of termination of service does not arise. He simply absented himself and subsequently not engaged for want of work.

[Handwritten signature]

[Handwritten signature]
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[Handwritten signature]

18. That in reply to the contents of para 4.16 of the application it is submitted that the representation appears to have been received as stated in this para was examined and found not justified. The same was rejected.

19. That in reply to the contents of para 4.17 of the application it is submitted that the applicant being a daily rated mazdoor and not governed under any service rules is not entitled to be heard through Hon'ble CAT.

20. That in reply to the contents of para 4.18 of the application it is submitted that the appointment of regular Group-D official in the office of the deponent is not made only from amongst the daily rated mazdoors but also made through direct recruitment from employment exchange who have got good record of their duty while working in the office are also considered. The appointment is made by the administration by holding a DPC. The DPC recommends those cases in which the daily rated mazdoors are found upto the waxx mark and loyal to their work. Whenever any engagement of casual worker is made, they are never assured that they will be regularised against Group-D posts and there exists no term and condition letter offer of ~~offer~~ to casual worker to the effect that

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the casual worker engaged so will be regularised as Group -D after putting any length of service. Moreover cases of persons like Shri Prem Shanker do not fall within the purview of recommendations by the DPC in future also as the person has been totally found unfit for the Government work due to his dereliction of work assigned to him.

21. That in reply to the contents of para 4.19 of the application it is submitted that the deserving candidates working as DRM when found fit after requisite day of work as DRM they have performed, are considered for Group-D posts on the basis of good conduct and devotion to work and loyalty by convening of DPC. As regards the regularisation of the DRMs named herein as Group-D employees, it was done in normal course having these cases deserving for regularisation, whereas the case of the applicant not come in such category of DRMs, due to his poor performance.

22. That in reply to the contents of para 4.20 of the application it is submitted that these DRMs mentioned in this para belong to the same list of candidates for management as DRM received from employment exchange.

23. That the contents of para 4.21 of the application are incorrect as stated ~~xxxxxxxxxxxx~~ hence denied and in reply it is submitted that no type of harrassing attitude as complained by the applicant, has been adopted against the applicant. Rather he himself gave poor performance.

24. That in reply to the contents of para 4.22 of the application it is submitted that the applicant is not entitled to any leave or casual leave while working as daily rated mazdoor on the basis of wages on the daily work done.

25. That the contents of para 4.23 of the applicatin are incorrect as stated, hence denied and in reply it is submitted that he was only a daily rated mazdoor and was paid for the period he was engaged.

SD [Signature]
26. That in reply to the contents of para 4.24 of the application it is submitted that there is no sub provision. Industrial Act is not applicable in the instant case.

[Signature]
27. That in reply to the contents of para 4.25 of the application it is submitted that the applicant has been warned for his poor work several times by his superiors but of no result. He had been several time found indulged in activities termed as

indiscipline and disloyalty. He has accepted in writing his failure in carrying out his work.

He did not prevent the people from ~~disgrace~~ misusing the office premises on several occasions and suspected to be in league with mischievous elements. He had repeatedly been habitual of making indisciplines and disloyalty to his work. He has committed in writing his mistakes and had prayed for forgiveness. But actually he did not mend himself.

28. That in reply to the contents of para 4.26 of the application it is submitted that there is no questions of over-stayal of leave in this case as no leave etc. were granted to the applicant. It was decided by the competent authority not to engage him for further work as he deserted his work as per his will by leaving Govt. property unguarded. It required no any other course of action except to not allow him to be engaged on work further.

29. That in reply to the contents of para 4.27 of the application, it is submitted that the applicant was engaged at the rate of Rs.750/- plus DA per month the applicant was engaged on the basis of daily wages rates at the rate of Rs.750 plus DA admissible divided y-number of days of the month in which he has worked per day but not Rs.750 plus DA per month rates as paid.,

Question of termination does not arise in his case being a daily rated mazdoor.

30. That the contents of para 5 of the application needs no comments.

31. That the contents of para ~~6~~ 7 of the application needs no comments.

32. That in reply to the contents of para 7(a) to (c) of the application it is submitted that the applicant has ~~sought~~ sought for relief to allow him to continue on the work of the LVth Class which is uncalled for in view of the comments given above. He was neither engaged against any post regularly nor he has acquired any len on any post of Group-D cadre by recommendations of the DFCs and as such no employment can further be given to him even in the capacity of daily rated mazdoor as the work and conduct of the applicant is far from satisfactory.

33. That in reply to the contents of para 8(i) of the application are wrong in the light of what has been stated in the aforesaid paras. ~~41~~

34. That the contents of para 8(ii) of the application are incorrect as stated, hence denied and it is submitted that the applicant was habitual of

absenting himself from work frequently. The applicant could not complete his work even for a year continuously due to his absence from work or intermittent nature of work provided in cases with DRM workers.

35. That the contents of para 8(iii) of the application are incorrect as stated hence denied and reply it is stated that applicant was terminated on the ground of over stayal of duty as to what he has required to say by saying like this is not understood. In the case with applicant who was not engaged further as worker on DRM basis due to non-availability of work for him there has not been violation of any clause of the constitution because any employer can not employ anyone, even on the daily rated mazdoor basis, without having satisfaction of the work and conduct of the employee.

SR [Signature]
36. That in reply to the contents of para 8(iv) of the application it is submitted that the applicant does not come within the purview of a regular Government servant subject to these rules.

37. That in reply to the contents of para 8(v) of the application it is submitted that the casual workers engaged so are not entitled for any type of leave instead they are given one day rest after six days continuous duty, therefore, there was no question of deducting anything from the dues of

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casual worker as he had absented from duty without any information/permission and he was not entitled for any leave. His conduct and ~~and~~ devotion to work was not found upto the mark to engage him further.

38. That in reply to the contents of para 8(vi) of the application it is submitted that the applicant is not subject to be governed under CCS(CCA) Rules, hence no comments.

39. That in reply to the contents of para 8(vii) of the application it is submitted ~~that~~ that instead of one year continuous service, there are certain other conditions for regularisation of the service and the applicant did not fulfil these conditions and so not considered, as this issue has repeatedly been disclosed in aforesaid paras.

40. That the contents of para 8(viii) of the application need no comments.

41. That ~~that~~ in reply to the contents of para 8(ix) of the application it is submitted that no violation of any clause of constitution has been done in this case, as already disclosed in aforesaid paras.

42. That the contents of para 8(x) of the application are incorrect as stated hence denied.

43. That the contents of para 8(xi) of the application are incorrect as stated, hence denied.

44. That the contents of para 9, 10, 11 & 12 of the application needs no comments.

45. That in view of the facts and circumstances stated above, the application filed by the applicant is liable to be dismissed with costs against the applicant.


Deponent.


Lucknow,

Dated: 18/3/98.

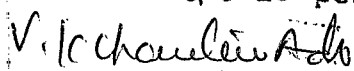
Verification.

I, the above named deponent do hereby verify that the contents of para 1 & 2 of the affidavit are true to my personal knowledge and those of para 3 to 4 of this affidavit believed by me to be true on the basis of the information gathered and official records and those of contents of para 45 are also to be true on the basis of legal advice.

Dated:

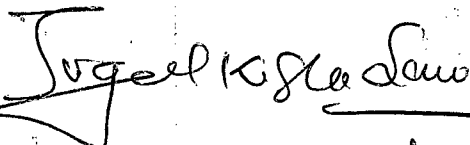

Deponent.

I identify the deponent who has signed before me is the same person, who is personally known to me.


V. K. Chaudhary


(VK Chaudhary)

Addl Standing Counsel for Central Govt
(Counsel for the Opp. parties)


Jogee K. S. Sahu

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