

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE O.A. 83 of 1989 (U)

Name of the parties _____

Vivek Rajan Sinha Applicant.

Versus..

Union of India Respondents.

Part A.B.C.

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checked

23/6/2011

27/12/11

Certified that no further action is
required to take and that the case is fit
for assignment to the record room (D).

Regd

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 83 of 1989

APPLICANT (s) Umesh Ranjan Srivastava & others

RESPONDENT(s) U O G & others

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 ?	Six 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 838835 dt. 10 ⁴ / ₈₉ (50/-)
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

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ?
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ?
11. Are the application/duplicate copy/spare copies signed ?
12. Are extra copies of the application with Annexures filed ?
- ☒ 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 ?
14. Are the given addresses, the registered addresses ?
15. Do the names of the parties stated in the copies tally with those indicated in the application ?
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 ?
- (a) Concise ?
- (b) Under distinct heads ?
- (c) Numbered consecutively ?
- (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for indicated with reasons ?

yes

yes

~~yes~~ N.A.

No.

yes

yes

yes

—

No

yes

yes

N.A.

yes

yes

yes

yes

yes

yes

No representation made at all.

19. Whether all the remedies have been exhausted.

May be listed before
Court on 20-4-1989

17/4/89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

GA 83 of 89 L

REGISTRATION No. _____ of 198 .

V R - Srivastava

APPELLANT
APPLICANT

VERSUS

U. O. & Co. Exrs

DEFENDANT
RESPONDENT

For order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
20.4.89	Hon'ble Justice K. Neth. VC Hon'ble Mr. D. S. Mishra, AM Consent for applicant is present. List this case for hearing on admission on 26.4.89 A M. VC	
26.4.89	Hon. D. S. Mishra, A.M. Hon. D. K. Agarwal, J.M. deemed consent for the applicant regarding time to make amendment to application. He may do so within a week. Thereafter, it may put up on orders on 17.5.89. A.M.	OR Case was adjourned to 26.4.89 for hearing on admission. Submitted for admission. 25/4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. 03 of 1989.C4

APPELLANT
APPLICANT

V R. Srivastava

VERSUS

DEFENDANT
RESPONDENT

U.O. 9

Serial
number
of order
and date

Brief Order, Mentioning Reference
if necessary

How complied
with and date
of compliance

18/09

Hon. Justice K. Nath, J.C.

Sri Dinesh Chandra makes appearance on behalf of all the opposite parties and files short counts to oppose ^{admission} ~~this application~~ of the application. In para 11 of this counts the period of time during which the applicants had worked as casual typists in different years has been mentioned. At the same time it is stated that the applicants' engagement was for broken periods and there was no continuity in their service. Sri Chandra also says that there are no provision for absorption of casual typists like the applicants. It will be appropriate to have a detail of the duration of the employment of the applicants showing whether there were any broken period in the applicants' employment. A supplementary counts be filed in this respect within three weeks. The applicant may file rejoinder to the short counts & the supplementary counts within one week thereafter and list for admission before a Bench on 13-9-89.

OR
- In compliance of court order of 3.7.09, the learned counsel for the applicant has incorporated amendments.
No reply was input to the reply through reply on 6.7.09.
Neither reply nor an acknowledgment has been received. Hence been return decrees. Submitted for admission.

Both notices were issued to the applicant on 3.7.09.
The learned counsel for the applicant has filed an acknowledgment. No reply has been submitted for admission.

Neither short rejoinder nor a short supplementary counts has been filed. Submitted for admission.

V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

Lko Circuit Bench

O.A.NO. 83 1986 (L)
T.A.NO.

DATE OF DECISION _____

V. R. Srivastava & another PETITIONER

Mr. D. P. Singh.

Advocate for the
Petitioner(s)

VERSUS

U.O.I. & ors

RESPONDENT

Mr. D. Chandra.

Advocate for the
Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Nall, V.C.

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

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

yes

yes

yes

yes

Dinesh/

K. Obayya

(AS)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
CIRCUIT BENCH AT LUCKNOW.

O.A. 83/1989(L)

Vivek Ranjan Srivastava & another ... Applicants.

Shri O.P. Singh ... Counsel for the Applicants.

versus

Union of India & others ... Respondents.

HON. MR. JUSTICE K. NATH, VICE CHAIRMAN.

HON. MR. K. OBAYYA, ADMINISTRATIVE MEMBER.

(Judgment delivered by Hon. K. Obayya, A.M.)

In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant^s Shri Vivek Ranjan Srivastava and Shri Rudra Prakash Singh, who were former employees in Accountant General's office Lucknow, questioned their termination from service and sought a direction to opposite parties to regularise their services in the post of Typist. Their further prayer is that the applicant No. 1 be treated as a Quasi Permanent (Q.P.) Government servant since he has completed 3 years of continuous service and that both the applicants be given regular scale of the post.

2. Their case is that the applicant No. 1 is a Commerce Graduate; he came to know that there were some vacancies of Typist in Accountant General (Audit), Lucknow office and he applied for a post. After passing the typing test and interview he was selected as a casual typist on remuneration of Rs 20.00 per day and they were asked by the respondents

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No. 1 to work with effect from 10.12.1986. He joined his duties on 10.12.86 and worked till 3.10.1988 but his services were dispensed with on 4.10.88. The applicant No. 2 is a Science Graduate. He also applied for the post of Typist and was appointed on same terms and conditions as applicant No. 1 and he worked during the periods from 29.4.87 to 9.2.88, 29.2.88 to 29.9.88. Thereafter, his services were dispensed with. The applicants alleged that their termination is arbitrary and wrongful since their work was found to be satisfactory while applicant No. 1 has completed 3 years of service; the applicant No. 2 has completed more than 240 days of service and their termination without following the provisions of section 25 F of the Industrial Disputes Act, 1947 is irregular. The applicant No. 1 also claims to have become Q.P. government servant, as he has completed 3 years of continuous service and as such the services should be regularised on the basis of instructions contained in Annexure 5.

3. In the counter the respondents stated that to cope up with the increased load of work the applicants were engaged from time to time for typing work for short duration not exceeding five days in a week. This was on casual basis on payment of daily wages of Rs 20.00. According to them the applicant No. 1 worked for 15 days during the year 1986, 233 days in 1987 and 177 days in the year 1988, while the applicant No. 2 worked for 160 days in the year 1987 and 181 days in the year 1988. Their engagement was for broken period and there was no continuity in service. It is also further stated that the post of Typist is a Group C post and appointment is made on the recommendation of Staff

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Selection Commission (S.S.C. for short) and the respondents are not competent to make the appointment ^{without} ~~for~~ such recommendation. It is denied by the respondents that the applicants were appointed against any vacancy. They were only engaged on casual basis, liable to be terminated without any order.

4. In the rejoinder affidavit the applicants admit that they were engaged as Casual/Daily Wage Workers, though the nature of work they were called upon to do was regular. It is also admitted that the posts of Typist are Group 'C' posts and that recommendation of S.S.C. is necessary for regularisation of services. It is also stated that the applicants are entitled for salary on the principle "equal pay for equal work".

5. We have heard the learned counsel for the parties and have also perused the records. The learned counsel for the applicant assailed termination on the ground that it is not in conformity with the provisions of Section 25-F of the I.D. Act, 1947. He contended that the applicants are entitled for the benefit under this Act on the basis of number of days they worked. He also relied on the decisions of the Allahabad High Court, Lucknow Bench, Lucknow in Naresh Chandra Srivastava v. Scooters India Ltd. (1986 (4) LCD 427) and of the Hon'ble Supreme Court in Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation (AIR 1986 SC 458). In both the above decisions it was upheld that for calculation of continuous service, not only the actual working days but also Sundays and other holidays should be taken into account. The Hon'ble Supreme Court in the case of Workmen of American Express International Banking Corporation, referred to above, has observed as follows :-

"The expression "actually worked under the employer" cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily

comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc."

The proposition laid down in these decisions are well established and we have no disagreement with them. But the question is whether the applicants are "workmen" and the office of the Accountant General, U.P. (Audit) is an Industry/Industrial establishment for purposes of the I.D. Act, 1947. The terms "workman" and "industry" are inter-related in this Act as there cannot be a workman without industry and vice versa. Section 25-F of the said Act provides that no "workman" can be retrenched without one month's notice being given or wages paid in lieu thereof, and compensation equivalent to 15 days average pay and service of notice on the appropriate Government or authority. The safeguards under this provision are applicable only to those workmen who have completed one year's continuous service. It is noticed in para 11 of the short counter-affidavit that applicant no.1 has worked for 15 days in 1986, 233 days in 1987 and 177 days in 1988. While applicant no.2 worked for 166 days in 1987 and 181 days in 1988. In both these cases the minimum required days, viz. 240 days to be eligible for protection under this Act has not been fulfilled. Further the main issue is whether the office of the Accountant General can be deemed to be an "industry". The definition of this term, as given in Section 2(j) of the Act, is as under :-

"(j) "industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, -

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- (i) any capital has been invested for the purpose of carrying on such activity; or
- (ii) such activity is carried on with a motive to make any gain or profit,.....

but does not include -

- (1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

.....

- (6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or"

From the above it can be seen that the term "industry" has wide import but departments/authorities exercising the sovereign functions are excluded from the definition. This position has also been upheld by — — — — — the Hon'ble Supreme Court in Bangalore Water Supply and Sewerage Board v. A. Rajappa and others (AIR 1978 SC 548) wherein it was observed that "sovereign function strictly understood (alone) qualify for exemption".

6. The learned counsel for the applicant has not placed before us any decision or order to the effect that the office of the Accountant General, etc. is a deemed "industry". For the reasons stated above, we are of the view, inasmuch as the office of the Accountant General exercises sovereign powers, it does not fall within the definition of the term "industry" under the I.D. Act, 1947, hence no infirmity is attached for termination of the services of the applicants for not following the provisions of Section 25-F, as the same are not applicable in this case.



7. The next point urged by the learned counsel for the applicant is on "equal pay for equal work". He relied on the decision in Surinder Singh & another v. The Engineer-in-Chief, CPWD and others (AIR 1986 SC 584) wherein it was held that persons employed on daily wage basis are entitled to same wages as permanent employees for doing identical work. Whether the work done by the applicants are ~~the~~ identical as the work done by regular Typists is a point in dispute here. The stand taken by the respondents is that the applicants were engaged from time to time to cope up with the increased load of work. Their engagement was not against any vacancy and their work was of casual nature. In para 4 of the rejoinder affidavit it has been admitted by the applicants that they were engaged as and when required. The engagements were in broken spells. The learned counsel for the applicants brought to our notice O.M. No. 49014/2/86-Estt(C), dated 7.6.1988 containing policy guidelines regarding recruitment of casual workers and persons on daily wages. Paras (iv) & (v) of this O.M., which are relevant, are as follows :-

"(iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

(v) In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser."

8. The learned counsel for the respondents argued that these instructions are applicable only in the case of class IV employees and workers and not to Group 'C' posts and that the

daily wages was paid keeping in view the provisions in para (v) above. He also contended that the work done by the casual Typist was not the same as that of regular Typist. Apparently, the instructions have been given keeping in view the casual workers working in different Departments and not persons working temporarily or on ad hoc basis in Group 'C' posts. We are inclined to agree with the learned counsel for the respondents that in cases not coming under ~~wikr~~/para (iv) the minimum wages should be as per the Minimum Wages Act, 1948, as certified by local authorities.

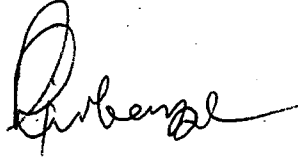
9. The last point urged by the learned counsel for the applicants was for regularisation. Admittedly, the applicants were not issued any appointment order nor was there any termination order. The respondents state that no order were given as the services of the applicants were engaged for casual nature of work. It is also admitted that the posts are Group 'C' posts and are within the purview of the SSC. It is not the case of the applicants that they were selected by the SSC. Their plea that the permission of the SSC should have been obtained to appoint them on regular basis, in our view would be stressing matters too far. The objective of bringing the posts within the purview of the SSC is that the vacancies are notified in News Papers for wide publicity so as to enable all eligible candidates to appear for the said examination and those meritorious are selected and names of such selected persons are sent to the Departments depending on the vacancies notified. Even candidates appointed on temporary/ad hoc basis have to go through this channel of appearing for the competitive examination held by the SSC and only when they are successful in the said examination they have a right for regularisation. The applicants in this case were not even appointed against regular or temporary vacancies. They were only casual Typists and they have not come through any selection in competitive examination, though selections were made by the SSC during this period, as such their claim for regularisation is devoid of any merit.

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10. For the aforesaid reasons we consider that the application must fail. It is accordingly dismissed without any order as to costs.



MEMBER (A).



VICE-CHAIRMAN.

Dated: April 23, 1990.

PG.

Before the Hon'ble Central Administrative Tribunal

Lucknow Bench, Lucknow.

Claim Petition No. 83 of 1989 (U)

Application under section 19 of the Administrative
Tribunals Act 1985

Vivek Ranjan Srivastava & another Applicants

Versus

Union of India & others Respondents.

I N D E X

Sl.No.	Description of documents relied upon	Page number from to
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1.	Application	1 to 14
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2.	Annexure no. 1 Commendation letter dated 1.12. 88 issued by the opp. party no. 3	15
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3.	<u>Annexure no. 2</u> Directive Union of India, for regularisation of daily wages workers-directive and Principles .	16 to 18
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4.	Vakalatnama.	- 19
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Lucknow
dated 13.4. 1989

Vivek (RP Singh)
Signature of applicants

through
(O. P. Singh) Advocate.
Counsel for the applicants.

List before court on 20.4.89

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW.

Claim Petition No. 83 of 1989

Application under section 19 of the Administrative
Tribunals Act 1985

1. Vivek Ranjan Srivastava, aged about 26 years, son of
Shri Krishna Kumar Srivastava, resident of 78 Shatur-
Khana Maqboolganj, P. S. Qaiserbagh, Lucknow.
2. Rudra Prakash Singh, aged about 29 years, son of
Shri Shital Prasad, C/O Shri Jagannath Prasad,
House No.215/320 Bashiratganj Subhash Marg, P. S.
Naka Hindola, Lucknow

..... Applicants.

Versus

1. Union of India through its Secretary, Accountant
General U. P. IInd Floor, Sahkarita Bhawan, Vidhan
Sabha Marg, Lucknow.
2. The Accountant General (audit) Office situate
at IInd Floor, Sahkarita Bhawan, Vidhan Sabha Marg,
Lucknow.
3. Audit Officer/ G. P. Accountant General Office,

.....2....

Filed today
Noted for
28/4/89
15/4/89. Ash

Vivek
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Office situate at IInd Floor, Sahkarita Bhawan,
Vidhan Sabha Marg, Lucknow.

4. Mr. Jagbir Singh, major, by age son of not known
resident of C-1396 Indira Nagar, Lucknow working as
casual Typist with the opposite parties no. 2 and 3
in their office.

..... Opposite parties

Details of application :

(i) Name of the applicants : 1. Vivek Ranjan Srivastava
no. 1

(ii) Name of applicant's no. 1's
Fathers : Shri Krishna Kumar
Srivastava.

(iii) Designation and office
in which employed : Casual typist on
Daily wages upto
3.10.1988.

(iv) Office address : Not applicable.

(v) Address of service of : Accountant General Office
All notices : IInd Floor Sahkarita
Bhawan, Vidhan Sabha
Lucknow.

AND

(i) Name of the applicant No. 2 : Rudra Prakash Singh

(ii) Father's name of the
applicant No. 2 : Shri Shital Prasad.

(iii) Designation and office : Casual typist on
in which employed : daily wages upto
29.9.88

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Vivek
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(3)

(iv) Office address : As applicant no. 1.

(v) Address of service of notices As above.

2. Particulars of the respondent : Union of India, AND
Accountant General
Opposite parties. U. P., IInd Floor

Sahkarita Bhawan,
Vidhan Sabha Marg,
Lucknow
(respondent no. 1 to 3)

Respondent no. 4. Mr. Jagbir Singh, son of
not known, resident of
C-1396 Indira Nagar,
Lucknow working as Casual
Typist, with the opposite
party/respondent no. 2 and 3

3. Particulars of the orders

against which the applkcation
.....
is made

The application is against the following
orders :-

(i) That the respondent no. 2 and 3
dispensed with the services of the
applicant no. 1 on 4. 10.1988 and
refused to continue to work with
the respondent no. 2 and 3 as
casual typist on daily wages at the
rate of Rs. 20/- per day, while the

.....4.....

RP. Singh

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(4)

applicant no. 1 was appointed by the opposite party no. 3 after selection, in typing test and after passing the interview with effect from 10. 12. 1986 and along with other condidates the applicant no. 1 perform his duties w. e. f. 10.12. 1986 as casual typist in the office of the respondent no. 2 and 3 AND the applicant no. 2 was appointed as casual typist on daily wages on 29. 4. 87 and worked upto 19.2. 1988 and after a short break he was reinstated on 29. 2.1988 and worked upto 29.9.1988 on the same post and ultimately the opposite party/respondent no. 3 dispensed the services of the applicant no. 2 without any notice in writing or any charges, allegations etc. and order the applic ant no. 2 not to work in his ~~xxx~~ office as his services is no longer required and intimation regarding rejoining of the applicant no. 2 be sent through post if the respondent no. 2 and 3 requires the services .

2. Jurisdiction of the Tribunal.

The applic ants declares that the subject

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*under
Ref
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matter of the order against which they want the reinstatements with regularisation of services and having received/attain "QUASI PERMANENT" STATUS as regard the applicant no. 1's services be appointed as Permanent Government servant and as for as the applicant no. 2, his services may be reinstated with that wages and also be regularised, as Typist on permanent basis.

3. Limitation

The applicants further declares that the application is within the Limitation Prescribed in section 21 of the Administrative Act 1985.

4. Facts of the case.

The facts of the case of applicant no. 1 is given below :-

(a) That the applicant no. 1 is a commerce graduate and has already attained the age of approximately 26 years.

2. That the applicant no. 1 on coming to know about some vacant Posts of Typists in the office of the respondent no. 2 and 3. The applicant no. 1 appeared in the said test alongwith other candidates and after passing the Typing test as well as Interview, selected

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as casual Typist at the rate of Rs. 20/- per day and was asked by the ~~opposite~~ respondent no. 3 to perform the duties in his office with effect from 10.12.1986 . AND the applicant no. 1 joined the / office of the opposite party no. 2 and 3 on 10.12.86 and serve the respondent no. 2 and 3 in their office upto 3. 10.1988 till his services were dispensed with ~~a~~ without any charge against him and without any sort of notice on 4.10. 1988. .

(c) That the opposite party/ respondent no. 3 appreciated the services and out put of work of the applicant no. 1 as casual typist and also as Diary despatch and Electronic Typing work, in the office of the respondents no. 2 and 3, throughout his duration of services. The commendation letter issued by the respondent no. 3 dated 1. 12. 1988 commending best out-put of the applicant no. 1 and also pertaining his character and behaviour and heard working with honesty, is ~~a~~ enclosed herewith as annexure No. 1 to this petition.

The facts of the applicant no. 2 is given below :
(dx)

(a) That the applicant no. 2 is a ~~ex~~ science graduate and has already attained the age of 29 years approximately.

(b) That the applicant no.2 was appointed on the

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post of Typist as " Casual Typist " at the rate of Rs. 20/- per day and was asked by the respondent no. 3 to perform the duties in his office with effect from 29.4.1987 and accordingly the applicant no. 2 joined the office of the respondent no. 2 and 3 on same date asked by the respondents, and worked upto 19.2.1988 after without any break and thereafter/a short break of ten days he was reinstated on 29. 2. 1988 and worked upto 29.9.1988 on the same post and in the same Office . The work of the applicant no. 2 always appreciated by the respondents no. 2 and 3 during the services period of the applicant no. 2 . Ultimately the opposite party no. 3 dispensed with without any charge against him and without any sort of notice on 30.9.1988 and advised him that through registered post of reinstatement as Typist will be given later on to the applicant no. 2 without a month or two but that was hallow promises and in vain .

4. Grounds for relief with legal provisions :-

- a) Because the opposite parties-respondents did not treat the applicants properly and wrongfully and arbitrarily terminated him from his services.
- b) Because the opposite parties-respondents did not serve any notice upon the petitioners as regards their

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(8)

termination from their services in writing nor been given any opportunity of hearing. despite of the fact that the petitioners/ applicants has attained the 240 days continuous services in a Calendar year, the applicant no. 1 completed twice and the applicant no.2 completed more than 240 days and continuation during their respective services, and they are legally entitled of notices to be served upon them under law.

c) Because the applicant no. 1 has completed near about 3 years continuous services as Typist/ Casual as mentioned by the opposite party no. 3 in his commendation letter marked as annexure no. 1 to the petition, and attained the status of " Quasi Permanent" Government servant while in service and is entitled to be regularised and absorbed in permanent service.

d) Because the applicant no. 2 had completed more than 240 days of continuous service without any break, and termination of his services without any notice by the opposite party no. 3 is illegal unjustice and bad in the eye of law , and also against the the Principles of 25-F of Industrial Disputes Act.

e) Because the applicants right of livelihood as

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instituted under Article 21 of the Constitution of India has been violated and continuous service of the petitioner / applicants being 240 days twice his services period has been violated, and the applicant no. 2 has also completed more than 240 days continuous in service in a Calendar year.

f) Because the act of the respondent no. 2 and 3 is illegal, unlawful, unconstitutional and against the Principles of natural justice and prejudice, therefore the directive by which the applicants have been disallowed to continue the work as Casual typists is bad in the eye of law.

g) Because the opposite party no. 4 Mr. Jagbir Singh being junior to the applicants is still serving under the opposite party no. 2 and 3 at their own sweet will and the Policy of " FIRST COME LAST GO" has not been adopted by the opposite party no. 2 and 3 which act of the respondents are clear violation of law.

H) Because the opposite parties/ respondents have clearly violated ignored intentionally the directives laid down in annexure no. 11 aforesaid, which they ought not to have done at all.

i) Because the light of the directions given in

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the aforesaid Directive circulated by the Government of India, the services of the applicants are liable to be regularised / reinstated made permanent.

j) Because the termination of the applicants from his services are liable to be set aside and his services be regularised as per provisions of law.

6. Details of the remedies exhausted : Nil .

xx The applicants declares that they have not exhausted any remedy except to approach this Hon'ble Tribunal because the opposite party no. 2 and 3 has not received any representation/ memorandum or any application when the applicants approached the respondent no. 2 and 3 time to time after the termination and refused to join and work in their office to the applicants .

7. Matters if previously filed or pending with any other court.

The applicants further declares that they have not preferred any petition/application pending before any other court, authority or any other Bench of the Tribunal .

8. Relief sought .-

In view of the facts mentioned in para 6 above

A20

(11)

the applicants prays for the following reliefs :-

- i) That by way of an order, direction or injunction the opposite party no. 2 and 3 may be directed ~~xx~~ not to terminate the services of the applicants and allow him to work and continue his services ;
- ii) That the applicants ~~xx~~ no. 1 be created " Quasi Permanent " Government servant having completed about three years contuous services as Casual Typist and his services be further regularised in terms of annexure no. II of this petition.
- (iii) That by way of decree, order, direction, the opposite party no. 2 and 3 be ordered to let the applicants continue in service and the entire period from 4. 10.88 in respect of the applicant no. 1 and from 29.9.88 in respect of applicant no. 2 their services on wards till the date of order of this Hon'ble Tribunal be deemed to be the service period of the applicants and the back salary upto date wages be also awarded to the applicants in the "equal pay to equal work " basis ~~xxxx~~ of termination period .
- (iv) That the costs of the claim petition be also awarded to the applicants.
- (v) That any other order, direction as this Hon'ble

[Handwritten signature]
RP

#25

(12)

Tribunal may deem fit just and proper under the
circumstances of the case, may kindly be also awarded
to the applicants against the opposite parties-
8x
respondents . X

9. Interim order, if any prayed for-----

Pending final decision on the application, the
applicant seeks the following interim relief :

(i) That the opposite parties no. 2 and 3 be
directed to reinstate the applicants with all
benefits, back wages and regarding regularisation
of their services, till the disposal of the
petition pending before this Hon'ble Tribunal.

(ii) That the services of the applicant no. 1
be regularised as Permanent Government Servant
and be treated as " permanent Government Servant "
and be awarded the same pay scale as other typist
of permanent post are drawing .

10. In the event of applicant being sent by
registered post, (Not applicable).

11. Particulars of Bank draft/Postal orders filed
in respect of the application fee :-

1. Name of the Bank on
which drawn. -----

APB

(13)

2. Number of Indian Postal

order(s)

1. DD 838835

4

(i) Name of the Issuing
Post office

G. P. O. Lucknow.

3. Date of issue of

10.4. 1989

post order

4. Post office at which Lucknow.

payable.

12. List of enclosures :-

1. Commendation letter dated 1. 12. 1988

issued by the opposite party no.3(.Photocopy)

2. Directive of Government of India, issued by

department of Personall and trainings/ O.M. no.

49014/2/86 ESTT. (C) dated 7th June, 1988. .

(Photocopy)

Verification :- We Vivek Ranjan Srivastava, aged

about 26 years, son of Shri Krishna Kumar Srivas-

tava, resident of 78 Shatur Khana, Maqboolganj,

Lucknow and (2) Rudra Prakash Singh, son of

Shital Prasad, aged about 29 years, r/o C/O Shri

Jagannath Prasad 215/320 Subhash Marg Bashiratganj

Lucknow working as X (despensed) in the office of

opp. party no. 2 and 3 do hereby verify that the

.....14.....

[Handwritten signature]
RD

A27

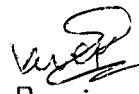
(14)


that the contents of paras 1 to 3
are true to my personal knowledge and those
of paras 4 to 12 are believed
to be true on legal advice and that I have not
suppressed any material facts.

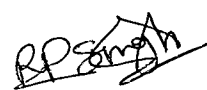
Lucknow

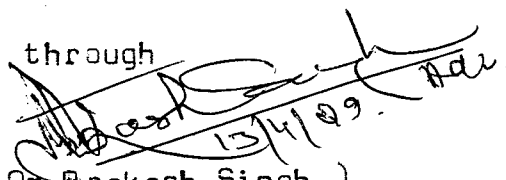
dated 13. 4. 1989.

Signature of the applica
ts. no. 1


(Vivek Ranjan Srivastava)


Signature of applicant no. 2


(Rudra Prakash Singh)

through

(Om Prakash Singh)
Advocate.
Counsel for the applicants.

Before the Hon'ble Central Administrative
Tribunal, Lucknow Bench. (A22)

Claim Petition No. of 1989

Niraj Ranjan Srivastava
& another

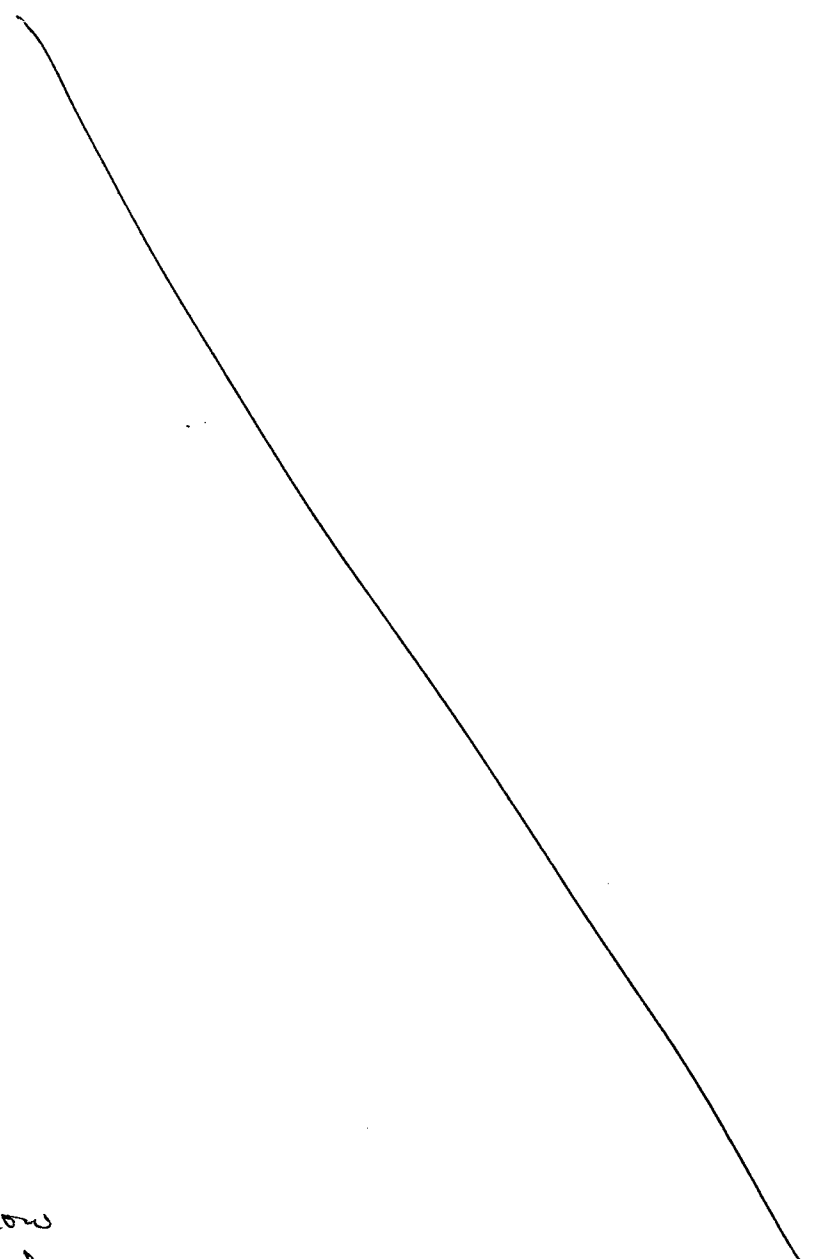
— Applicants

vs.

Union Of India & others — Respondents

Annexure No. - I

Lucknow
Dated. 13.4.89.


[Signature]
13/4
(O.P. SINGH)
Counsel for the
Applicants.

Annexure No-1

OFFICE OF THE
ACCOUNTANT GENERAL(AUDIT)-II, U.P.,
SHAKTI BHAWAN EXTENSION,
II-FLOOR, 14-ASHOK MARG,
LUCKNOW- 226 001.

TO WHOM IT MAY CONCERN

This is to Certify that Shri VIVEK RANJAN SRIVASTAVA was working in this Office as Casual Typist from 10.12.1986 to 3.10.1988 @ Rs.20/- per day. He was a very hard working young man. Besides, typing work he had also been doing Diary, Despatch and Electronic Typing work.

Shri VIVEK RANJAN SRIVASTAVA bears a good moral character. I wish him all success in future.

Dated:- 1.12.1988



(P.P. PANT)
Audit Officer/D.P.

रक्षा परीक्षाधिकारी (विद्युत)
आर्यालय महालेखाकार उ० प्र० द्वितीय
१४, अशोक मार्ग, रावत नगर,
लखनऊ



Lucknow.

Dated 13.4.89


13/4/89
Counsel for the
Applicants.

1529

OFFICE OF THE ACCOUNTANT GENERAL (AUDIT) - II, U.P.
IIND FLOOR SAHKARITA BHAWAN
14, VITHAN SAEHA MARG
LUCKNOW

EXPERIENCE CERTIFICATE

Certified that Sri Rudra Prakash

is working in this office, as a casual typist since
April '87. He has good speed and is a accurate. I wish
him sucess in life.

1529

AUDIT OFFICER/ADN/87.
Audit Officer
O/o. the A.G. (Audit-II)
U.P., C.A.W., Lucknow.

Copy
1529

.H. Before the Hon'ble Central Administrative
Tribunal, Lucknow Bench, Lucknow.
Claim Petition No. --- of 1989.

Vivek Ranjan Srivastava
& another _____ Applicants


vs.

Union of India
& others. _____ Respondents

Annexure No. II

Lucknow.

Dated. 13.4.89.


13/4/89
(O.P. SINGH)
Adv.
Counsel for the
Applicants

Copy of Department of Personnel and Training's O.M.
No. 49014/2/86-Estt(C), dated the 7th June, 1988.

Subject:-Recruitment of casual workers and persons
on Daily wages - Review of policy.

.....

The policy regarding engagement of casual workers in Central Government Offices has been reviewed by Government keeping in view the judgement of the Supreme Court delivered on the 17th January, 1986 in the Writ Petition filed by Shri Surinder Singh and other Vs. Union of India and it has been decided to lay down the following guidelines in the matter of recruitment of Casual workers on daily wage basis :-

- (i) Persons on daily wages should not be recruited for work of regular nature.
- (ii) Recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.
- (iii) The work presently being done by regular staff should be reassessed by the administrative Departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.
- (iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.
- (v) In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/ Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser.

Vivek
Asst

- (vi) The casual workers may be given one paid weekly 'off' after six days' of continuous work.
- (vii) The payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly 'off' as mentioned at (vi) above. They will, however, in addition, be paid for a National Holiday, if it falls on a working day for the casual workers.
- ~~(viii)~~ In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.
- (ix) Where work of more than one type is to be performed throughout the year but each type of work does not justify a separate regular employee, a multifunctional post may be created for handling those items of work with the concurrence of the Ministry of Finance.
- (x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post.
- (xi) If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training.

All the administrative Ministries/Departments should undertake a review of appointment of casual workers in the offices under their control on a time-bound basis so that at the end of the prescribed period, the following targets are achieved :

- (a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.

....2/-

V. V. V.
Lup

- (b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.
- (c) The remaining casual workers not covered by (a) and (b) above are discharged from service.

2. The following time limit for completing the review has been prescribed in respect of the various Ministries/Departments :-

- (a) Ministry of Railways .. 2 years.
- (b) Department of Posts, Department of Telecommunications and Department of Defence Production. .. 1 year.
- (c) All other Ministries/Departments/Offices. .. 6 months.

Each Ministry should furnish a quarterly statement indicating the progress of the review in respect of the Ministry (proper) and all Attached/Subordinate offices under them to the Department of Personnel and Training in the proforma attached. The first quarterly return should be furnished to this Department by the 10th October, 1983.

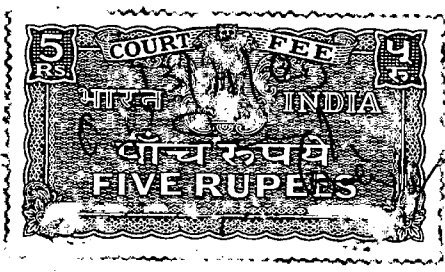
By strict and meticulous observance of the guidelines by all Ministries/Departments, it should be ensured that there is no more engagement of casual workers for attending to work of a regular nature, particularly after the review envisaged above is duly completed. Each Head of office should also nominate an officer who would scrutinise the engagement of each and every casual worker and the job for which he is being employed to determine whether the work is of casual nature or not.

Ministry of Finance etc. are requested to bring the contents of this Office Memorandum to the notice of all the appointing authorities under their respective administrative control for strict observance. Cases of negligence in the matter of implementing these guidelines should be viewed very seriously and brought to the notice of the appropriate authorities for taking prompt and suitable action against the defaulters.

Vijay
Rup

ब अदालत श्रीमान् - सामान्य सेंट्रल एग्जिज्यूटिव कोर्ट महोदय

[वादी अपीलान्त] श्री के.के. खन्ना का बकालतनामा
प्रतिवादी [रेस्पाडेंट]



वादी (अपीलान्त)

बनाम

प्रतिवादी (रेस्पाडेंट)
Claim Retention No. of 198

नं० मुकद्दमा सन् पेशी की ता० १६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री पी.पी. सिंह, ओ.पी. सिंह
होमीना जी.एस. एवं आशीष कुमार सग एडवोकेट
वकील महोदय एडवोकेट

नाम अदालत
मुकद्दमा नं०
नाम फरीकन बनाम

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें 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 हार्री विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवें, या पंच नियुक्त करें— वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी पर स्वयं या किसी अपने पैरीकार की भेजता रहूँगा 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।

Accepted
Om Prakash Singh
Advocate
96/59, Old Ganesh Ganj.
LUCKNOW

Accepted
हस्ताक्षर
साक्षी (गवाह) साक्षी (गवाह)

दिनांक सन् १६ ई०

स्वीकृत

96/61 पुराना गनेशगंज
एडवोकेट
स ख न ऊ

A34
(B21)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
CIRCUIT BENCH, LUCKNOW.

Short Counter-affidavit on Behalf of Respondants

Case No.83 of 1989 (L)

V.R. Srivastava and another ... Applicant

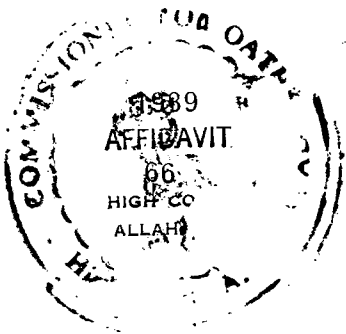
Versus

Union of India and Other Respondants

Short Counter-Affidavit

I, Mala Sinha, aged about 31 years D/O
Sri K.C.Sinha Dy.A.G. O/O the A.G.(Audit)-II,
Sahkarita Bhawan, Vidhan Sabha Marg, Lucknow do hereby
solemnly affirm and state as under :-

1. That the deponent is the Dy. Accountant General in the
O/O the A.G., 14 Vidhan Sabha Marg, Lucknow and is fully
conversant with the facts of the case deposed hereinafter.
2. That the deponent has read the application filed
by the applicants and has understood the contents thereof.
3. That the present counter-affidavit is filed to
oppose the admission of the said application and the
respondants reserve the right to file a detailed counter-
affidavit in case the application is admitted.
4. That on account of the increased load of work
the applicants were engaged from time to time, for
typing work, and for short duration, not exceeding five
days in a week.
5. That the applicants were engaged on a purely
casual basis and were paid daily wages @Rs.20/- only.



M. Sinha
माला सिन्हा
उप महालेखाकार (वाणिज्य)
कायालय महालेखाकार (ले. व.) इलाहाबाद
उत्तर प्रदेश, नवम्बर

A35

1322

6. That the appointment to the regular post of a typist which is a Group C post is made on the recommendations of the Staff Selection Commission and the respondents are not competent to make appointments for Group -C posts without such recommendations from the Staff Selection Commission.

7. That the applicants were engaged for doing typing work as casual workers.

8. That the post of a typist falls under the category of Group C posts.

9. That the applicants were employed for spells of short duration and for the work of casual nature on daily wages. As such no appointment letters were issued to the applicants. Neither any termination orders were issued whenever their services were no longer required.

10. That the applicants were not employed against any regular vacancy of Group C post. The applicants were simply casual workers liable to be disengaged at any time without any written order.

11. That the applicant No. 1, namely Shri V.R.Srivastava worked as a casual typist for 15 days in 1986, 233 days in 1987 and for 177 days in 1988. The applicant No.2, namely Shri Rudra Prakash Singh worked for 166 days in 1987 and for 181 days in 1988. Their engagement was for broken broken period and there was no continuity in service.

13, That the applicants have not exhausted departmental remedies available to them. No representations against the subject matter of the petition was made to higher authority of the department.



M. Singh
माला सिन्हा
उप महाप्रबन्धक (नॉन्डिप)
राज्यपाल महाप्रबन्धक (नॉन्डिप) इलाहाबाद
उत्तर प्रदेश, भारत

A36

1028

14. That under the position explained above, the application is not liable to be admitted.

Dated: 4-8-89

Lucknow

Deponent
माला सिन्हा
एक महालसाकार (वा. उ. प्र.)
काबिल महालसाकार (ले. प.) इ. प्र.
उत्तर प्रदेश, लखनऊ

Verification

I, the deponent above named do hereby solemnly affirm and verify that the contents of paras 1 to 3 are true to my personal knowledge and those of paras 4 to 13 are based on records are believed to be true. No part to is false and nothing material fact has been concealed. So help me God.

Deponent M. Sinha

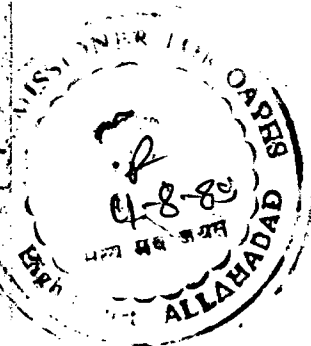
I identify the deponent who is personally known to me and has signed before me

Advocate
J. Chandra
एक महालसाकार (वा. उ. प्र.)
काबिल महालसाकार (ले. प.) इ. प्र.
उत्तर प्रदेश, लखनऊ

Solemnly affirmed before me on 4-8-89 at 9 am/pm by the deponent mala sinha who has been identified by Dr. Dinesh Chandra, Advocate, High Court, Lucknow Behch

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

Oath Commissioner



R. Kumar
OATH COMMISSIONER
Allahabad
Lucknow Bench

6/1/85
4-8-89

A-364
1524

ब अदालत श्रीमान्
[वादी अपीलान्त]
प्रतिवादी [रिस्पॉण्डेंट]

Colonel Adnan Tahir
Grant Bnd, Zuckun

महोदय

वकालतनामा

टिकट

वादी (अपीलान्त)

V.R. Sundar & Mr. बनाम Mr. Jindhu & Mr. प्रतिवादी (रिस्पॉण्डेंट)

नं० मुकद्दमा 83 सन् 1989 (2) पेशी की ता० १६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री J. Jindhu & Mr. ...
... H. S. ... वकील
... महोदय
एडवोकेट

नाम अदालत
मुकद्दमा नं०
नाम फरीकन

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 प्रश्नोत्तर 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) रसीद से लेवें 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 एवयं या किसी अपने परोकार 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।

Accepted
D. ...
Adnan

हस्ताक्षर ...

साक्षी (गवाह) ... साक्षी (गवाह) ...

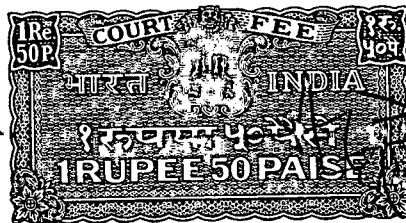
दनांक ... महीना ...

स्वीकृत

महोदय
उप महोदय
महोदय
सन् १९८९ ई०

A37

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
CIRCLE BENCH, LUCKNOW.



GA 03/04/89

Vivek Ranjan Srivastava

and another Applicants.

Vs.

Union of India & others Respondents.

APPLICATION FOR CONDONATION OF DELAY IN FILING
REJOINDER AFFIDAVIT.

Filed by
2/2/10

The applicants begs to state as under :-

1. That on the last date fixed, i.e. 13.9.1989, this Hon'ble Court (Tribunal) was pleased to allow a week's time to the applicants to file their Rejoinder Affidavit and listed the case for hearing on 25.10.89.
2. That because of the under-signed's pre-occupation with his personal work the same could not be prepared and filed in time allowed by this Hon'ble Tribunal.
3. That it will be in the interest of justice to condone the delay in filing the accompanying Rejoinder Affidavit.

WHEREFORE, it is most humbly prayed that the accompanying Rejoinder Affidavit may kindly be taken on record and the delay be condoned.

Lucknow.

DATE : 18th OCT., 1989.

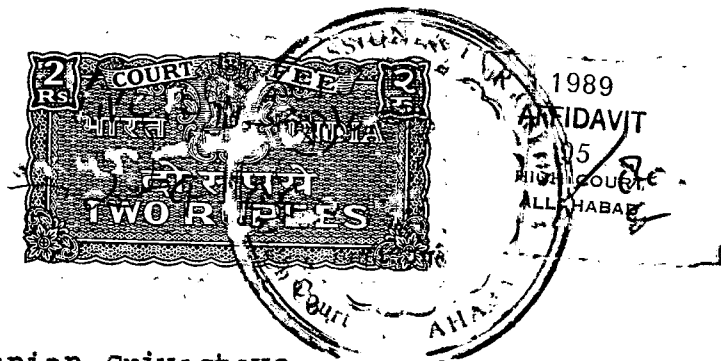
Arjun Singh
(ASISTANT)
Advocate.

Counsel for the applicants.

1430

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW CIRCUIT
BENCH, LUCKNOW.

REJOINDER AFFIDAVIT.



Vivek Ranjan Srivastava

and another Applicants.

Vs.

Union of India and others Respondents.

I, Vivek Ranjan Srivastava aged about 27 years,
son of Sri K. K. Srivastava, resident of 78 Shaturkhana,
Maghoolganj, Lucknow, do hereby solemnly affirm on oath
and state as under :-

1. That the deponent is one of the applicant and as such is fully conversant with the facts and circumstances of the case. The deponent has gone through the short Counter Affidavits filed on behalf of the respondents, and understood the contents of the same.
2. That the contents of para 1 and 2 of the short counter affidavit needs no comment.
3. That as regards the contents of para 3 of the short counter affidavit it is pertinent to mention here that despite granting of time to the respondent to file detail counter affidavit by this Hon'ble Tribunal. The respondent choose to file ~~another~~ short counter affidavit and under the circumstances how the respondents cannot reserve their right to file another counter affidavit.



Vivek Ranjan

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(2)

4. That as regards the contents of para 4 of the counter affidavit under reply, the same are uncorrect and hence denied, the deponent who engaged against regular nature of work because of shortage of regular staff, the respondent observe five days week, similar to other Central Government Offices, still, as and when required the deponent/applicant has worked for more than five days in a week. The weekly offs cannot be treated as broken period, in case, if there was any broken period in the case of applicant/deponent's service with respondents, then it was a deliberate one, with the sole intention of depriving the deponent/applicant of the benefits to which he would have become entitled.

5. That the contents of para 5 of the counter affidavit are admitted to the extent that the deponent was being paid @ Rs. 20/- per day, which is in clear violation of the guidelines laid down by the Central Govt. vide its O. M. No. 49014/2/86 dt. 7.6.88, a photocopy of the same is being made ANNEXURE I to this Rejoinder, it is further submitted that in pursuance of the guidelines contained in Annexure-1 the respondents are liable to pay the difference of the entire period and full amount of the days remained unpaid, the doctrine of " Equal pay for Equal work " be applied to the applicant's case and their services be regularised.

6. That as regards the contents of para 6 of the counter affidavit under reply it is submitted that the staff selection committee was established about 8 years back while Govt. order for approving casual workers against regular posts was issued after staff selection commission came into existence, hence, there was no obstacle in the way of the respondents as regards the regularisation of the applicant's/deponent's services, the respondents would have seek the recommendation of the staff selection commission in case of



K. K. P. R.

Also

(3)

the deponent/applicants, as is the practice with the other Central Govt. Departments.

7. That the contents of paragraphs 7 of the counter affidavit under reply are admitted to the extent that the deponent/applicants were engaged as casual/daily wages worker, rest are denied.

8. That the contents of paragraph 8 of the counter under reply are admitted to the extent that the posts under question falls under the category of Group C posts, but the respondents would have sought the recommendation of the staff selection commission for the purposes of regularising the deponent/applicant's services.

9. That the contents of para 9 of the counter affidavit under reply are admitted to the extent that by taking undue advantage of the applicants/deponent position the respondents had neither issued any letter of appointment nor that of termination, rest are denied.

10. That the contents of para 10 of the counter affidavit under reply are denied, it is further submitted that applicants/deponent were engaged against regular nature of work.

11. That the contents of para 11 are admitted to the extent as regard the number of working days excluding week-days and holidays for respective years, rest are denied.

12. That there is no paragraph 12 in the counter affidavit under reply.

13. That as regards para 13 of the counter affidavit under reply, it is submitted that all efforts of the deponent/applicants failed to evoke any response from the respondents, whenever the respondents were approached

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by the applicants/deponent, they were always told to wait for some more time.

14. That the contents of para 14 of the counter affidavit under reply are denied, it is further submitted that in view of the facts and circumstances mentioned in the petition as well as in the instant Rejoinder the application deserves to be allowed with costs through-out.

Lucknow.

Dated : 2 Oct., 1989.

Vivek Ranjan
DEPONENT.

VERIFICATION.

I, the above named deponent do hereby solemnly affirm and verify that the contents of paras 1 to 13 are true to my personal knowledge and those of paragraphs 14 are based on records are believed to be true, no part to it is false and nothing material has been concealed so help me God.

Signed and verified on this 2nd day of October.
at my residence at
1989 in the court compound at Lucknow.

Vivek Ranjan
DEPONENT.

I, identify the deponent who has signed before me. Personally known to me.
(ADVOCATE)

Solemnly affirmed before me on 21-10-89 at 1.00 a.m. by the deponent Vivek Ranjan Srivastava, who has been identified by

Rajiv Lochan Srivastav
CASH COMMISSIONER

21/10/89 21-10-89.

(AUB)

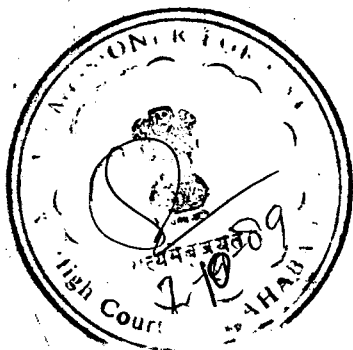
Copy of Department of Personnel and Training's O.M.
No. 49714/2/86-Estt(C), dated the 7th June, 1988.

Subject: Recruitment of casual workers and persons
on Daily wages - Review of policy.

....

The policy regarding engagement of casual workers in Central Government Offices has been reviewed by Government in view of the judgement of the Supreme Court dated 17th January, 1988 in the writ petition filed by Shri Shriender Singh and others Vs. Union of India. It has been decided to lay down the following guidelines for recruitment of casual workers on daily wages :-

- (i) Persons on daily wages should not be recruited for work of regular nature.
- (ii) Recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.
- (iii) The work presently being done by regular staff should be reassessed by the administrative Departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.
- (iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.
- (v) In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser.



For L.A.A.
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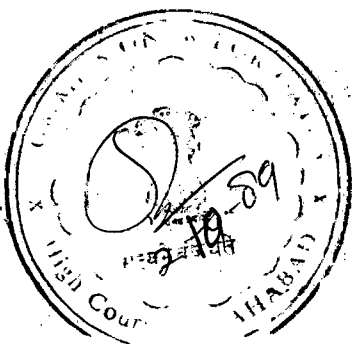
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- (vi) The casual workers may be given one paid weekly 'off' after six days' of continuous work.
- (vii) The payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly 'off' as mentioned at (vi) above. They will, however, in addition, be paid for a National Holiday, if it falls on a working day for the casual workers.
- (viii) In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.
- (ix) Where work of more than one type is to be performed throughout the year but each type of work does not justify a separate regular employee, a multifunctional post may be created for handling those items of work with the concurrence of the Ministry of Finance.
- (x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post.
- (xi) If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training.

All the administrative Ministries/Departments should undertake a review of appointment of casual workers in the offices under their control on a time-bound basis so that at the end of the prescribed period, the following targets are achieved :

- (a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.

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For Hasan
Adv
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- (b) The rest of the casual workers not covered by (a) above and whose attention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.
- (c) The remaining casual workers not covered by (a) and (b) above are discharged from service.

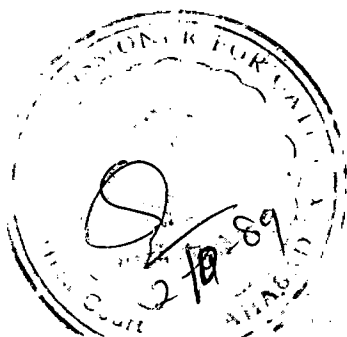
The following time limit for completing the review has been prescribed in respect of the various Ministries/Departments.

- (a) Ministry of Railways ... 2 years
- (b) Department of Posts, Department of Telecommunications and Department of Defence Production. ... 1 year
- (c) All other Ministries/Departments/Offices. ... 6 months.

Each Ministry should furnish a quarterly statement indicating the progress of the review in respect of the Ministry (proper) and all Attached/Subordinate offices under it to the Department of Personnel and Training in the form attached. The first quarterly return should be submitted to this Department by the 10th October 1988.

By strict and meticulous observance of the guidelines by all Ministries/Departments, it should be ensured that there is no more engagement of casual workers for any work of a regular nature, particularly after the review exercise above is duly completed. Each Head of Office should also nominate an officer who would scrutinise the engagement of each and every casual worker and the job for which he is being employed to determine whether the work is of casual nature or not.

Ministry of Finance etc. are requested to bring the contents of this Office Memorandum to the notice of all the appointing authorities under their respective administrative control for strict observance. Cases of negligence in the matter of implementing these guidelines should be viewed seriously and brought to the notice of the appropriate authorities for taking prompt and suitable action against defaulters.



Handwritten signature: Jaykumar
Handwritten initials: J/K

(Ple)

In the Central Administrative Tribunal at Allahabad
Circuit Bench, Lucknow

Case No. 83 of 1989 (L)

V.R. Srivastava Applicant
Versus

Union of India & other..... Respondants

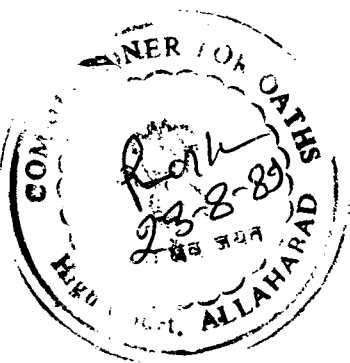
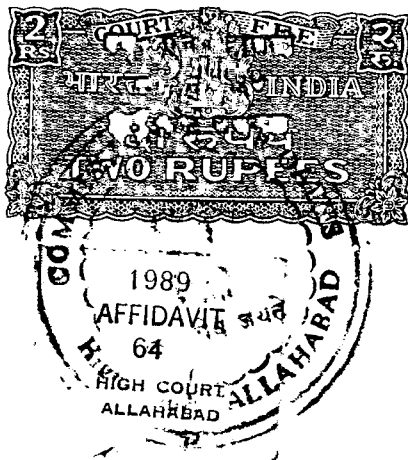
Supplementary Short Counter-affidavit on behalf of
Respondents.

I, (Km.) Mala Sinha, aged about 31 years,
daughter of Sri K.C. Sinha, Deputy Accountant General (Audit)
II, Sahkarita Bhawan, Vidhan Sabha Marg, Lucknow do hereby
solemnly affirm and state as under:-

1. That the deponent is the Dy. Accountant
General (Audit)-II, U.P., 14, Vidhan Sabha Marg, Lucknow
and is well conversant with the facts deposed hereinafter.

2. That the present supplementary Counter-
affidavit is filed to oppose the admission of the said
application and the respondents reserve the right to file
a detailed counter affidavit in case the application is
admitted.

3. That the contents of para 4 to 11 of the
short Counter-affidavit filed before the Tribunal on
4.8.1989 are reiterated. However, it is submitted that
the applicants' engagement was for broken period and
there was no continuity in service. A month-wise
statement for 1987 and 1988 showing the dates on which
the applicants were not engaged is being filed as an
Annexure I & II in case of Shri V.R. Srivastava and
Annexure III & IV in case of Shri Rudra Prakash. From
Ann. I it can be seen that Shri V.R. Srivastava was not
engaged continuously from 18th April to 15th May '87 i.e.
for a period of 28 days in 1987. Similary the applicant
was not engaged from 4th October, 1988 onwards. In
between also his engagement was broken. The other
applicant namely Shri Rudra Prakash was also not engaged



(MALA SINHA)
Dy. Accountant General (Audit) II U.P.
Office of the Accountant General
Lucknow.

continuously for the entire period. The broken period is indicated in annexure III and IV.

4. That it is further submitted that Shri Rudra Prakash is already employed in the local Medical Collage w.e.f. 9.2.89 as a technician in cardiology deptt.

5. That the petitioner applicants have not worked for the required no. of days each year for 2 consecutive years. In fact they have worked for less than 2 years in all.

6. That the recruitment for the post of clerk/typist is done by the Staff Selection Commission. The said commission had advertised for such posts in all these years and the applicants were never prevented from appearing in these competitive examination.

7. That in view of the averments made in the preceding paragraphs, the application is liable to be dismissed with cost.

Dated: August 23, 1989
Lucknow

M. Sinha

Deponent

(MALA SINGHA)

Verification Dy. Accountant General
Office of the Accountant General
(Audit) II U.P.
Lucknow.

I, the deponent above named do hereby solemnly affirm and verify that the contents of paras 1 to 2 are true to my personal knowledge and those of paras 3 to 6 are based on records are believed to be true. No part is false and nothing material fact has been concealed. So help me God.

M. Sinha

Deponent

(MALA SINGHA)

Dy. Accountant General Commercial
Office of the Accountant General
(Audit) II U.P.
Lucknow.



I identify the deponent who is personally known to me and has signed before me.

D. Chandra
Advocate

Solemnly affirmed before me on 23-8-89 at 11-5 am/pm
by the deponent *M. Mala Rana* who
has been indentified by Dr. Dinesh Chandra, Advocate,
High Court, Lucknow Bench

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

Oath Commissioner



Raj Kumar Mishra
Raj Kumar Mishra,
OATH COMMISSIONER
High Court, Allahabad
Lucknow Bench
No. 64117-5
Date 23-8-89

ANNEXURE-I

148

Statement of days during which daily wage typist was not required to attend the office.

V.R. Srivastava,

Calender year 1987

Jan, 87 3, 4, 10, 11, 17, 18, 24, 25, 26, 31 = 10

Feb, 87 1, 7, 8, 14, 15, 21, 22, 26, 28 = 9

March, 87 1, 7, 8, 14, 15, 16, 21, 22, 24, 28, 29 = 11

April, 87 4, 5, 11, 12, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 = 18 days

May, 87 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 24, 29, 30, 31 = 24 days

June, 87 6, 7, 9, 13, 14, 20, 21, 22, 27, 28 = 10

July, 87 4, 5, 11, 12, 18, 19, 25, 26 = 8

August, 87 1, 2, 8, 9, 15, 22, 23, 29, 30 = 9

September, 87 5, 6, 12, 13, 19, 20, 26, 27, 30 = 9

October, 87 3, 4, 10, 11, 17, 18, 22, 25 = 8

November, 87 1, 5, 8, 14, 15, 22, 29 = 7

December, 87 6, 12, 13, 19, 20, 24, 26, 27, 30 = 9



Malika
(MALA SINGH)
Dy. Accountant General
Office of the Accountant General
(Audit) II U.P.
Lucknow.

ANNEXURE-II

Statement of days during which daily wage typist was not required to attend the office.

Calendar year 1988

V.R.Srivastava

Days

Jan./88 2,3,9,10,16,17,22,23,24,30,31 = 11
Feb./88 6,7,13,14,20,21,22,23,27,28 = 10
March/88 4,6,12,13,20,26,27,31 = 8
April/88 1,2,3,9,10,16,17,23,24,30 = 10
May/88 1,7,8,14,15,18,21,22,28,29 = 10
June/88 4,5,7,8,9,10,11,12,13,14,15,16,17,18,
19,20,21,25,26 = 19 days
July/88 2,3,9,10,17,23,24,25,28,29,30,31 = 12 days
August/88 6,7,13,14,20,21,24,27,28 = 9 days
Sept./88 3,4,10,11,15,17,18,24,25 = 9 days
Oct,88 1,2 Worked on 3rd, was not
required to attend office after that.

(MALA SINHA)

Dy. Accountant General (Accounts)
Office of the Accountant General
(Audit) II U.P.
Lucknow.



ASO

ANNEXURE - III

Statement of days during which daily wage typist was not required to attend the office.

1987

Sri Rudra Prakash

5/87	2,3,6,9,10,13,16,17,23,24,29,30,31	= 13
6/87	6,7,13,14,20,21,27,28,30	= 9
7/87	4,5,11,12,18,19,25,26,29	= 9
8/87	1,2,5,8,9,16,22,23,29,30	= 10
9/87	5,6,12,13,19,20,26,27,30	= 9
10/87	3,4,10,11,17,18,22,24,25,31	= 10
11/87	1,5,7,8,14,15,21,22,28,29	= 10
12/87	5,6,12,13,19,20,21,22,25,26,27	= 11



M. Sinha
(MALA SINHA)
Dy. Accountant General
Office of the Accountant General
(Audit) II U.P.
Lucknow.

ANNEXURE-IV

REI

BROKEN PERIOD

Calendar year 1988

Sri Rudra Prakash

1/88	2,3,9,10,16,17,22,23,24,30,31 = 11
2/88	6,7,13,14,20,21,22,23,24,25,26,27,28 = 13
3/88	4,5,6,12,13,19,20,26,27,30,31 = 11
4/88	1,2,3,9,10,16,17,23,24,30 = 10
5/88	1,7,8,14,15,16,17,18,19,20,21,22,23,24,28,29 = = 16 days
6/88	4,5,11,12,18,19,25,26 = 8
7/88	2,3,9,10,16,17,23,24,25,30,31 = 11
8/88	6,7,13,14,20,21,24,27,28 = 9
9/88	3,4,10, 11 = 4



M. Sinha

(MAA SINHA)
Dy. Accountant General Commercial
Office of the Accountant General
(Audit) II U.P.
Lucknow.