

(See rule 114)

OA/~~TA~~/~~RA~~/~~CP~~/~~MA~~/~~PT~~ 2.54.....of ~~20~~...90(L)

Pradeep Kumar Mishra Applicant(S)

Versus

.....Respondent(S)

INDEX SHEET

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Certified that the file is complete in all respects.

Signature of S.O.

Signature of Deal. Hand

DIPLOM BENCH, LUCKNOW

Registration No. 254 of 198~~9~~⁸ 90 (L)

GROUP MEMBERS

U.C.9.

Endorsement as to result of examination

- yes
yes
yes

yes
yes
N.A.
yes

yes
yes
yes
yes
yes

yes

y
yes
yes

No.

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④

Particulars to be Examined

Endorsement as to result of examination

11. Are the application/duplicate copy/spare copies signed ?
12. Are extra copies of the application with Annexures filed ?
 - a) Identical with the Original ?
 - b) Defective ?
 - c) Wanting in Annexures
13. Nos. _____ pages Nos _____ ?
14. Have the file size envelopes bearing full addresses of the respondents been filed ?
15. Are the given address the registered address ?
16. Do the names of the parties stated in the copies tally with those indicated in the application ?
17. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?
18. 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 ?
19. Have the particulars for interim order prayed for indicated with reasons ?
20. Whether all the remedies have been exhausted.

yes

yes

yes

X

yes

yes

yes

yes

yes

yes

yes

yes

dinesh/

13/8/90

CA 254/90

13.8.70 Hon Mr. P. Srinivasan, AM.
Hon. Mr. J. P. Sharma, JM

(A3)
9

Mr. M. Dabney for the applicant
Admit.

The respondents will maintain
status quo as of today in
respect of the applicant for
a period of 14 days from today.
Issue notice to the respondents
returnable on 28.8.90 to
show-cause, why the interim
order should not be made
absolute.

Call on 28.8.70 to
consider the question of continuance
of interim relief. Copy of this
order be given to the parties

Deer
JM

M, 31
JM,
08

28.8.90 Hon Mr. D. K. Rajawar, JM.
Hon. Mr. K. Dabney, AM.

Shri M. Dabney for applicant
Shri VK Choudhary for OP 1 to 5.
Kun Amarjot Kaur for OP 6.

notice gr
on
17/8/91

Counter affidavit by ops
1 to 5 filed. Keep it on record. On 17.8.90
Council for OP No. 6 informing
us that the counter will be filed
tomorrow. Learned counsel for
the applicant wants time for
disposal of interim matters. List
on 31-8-90 for disposal
of interim matters. Meanwhile
interim orders shall continue
till 31-8-90.

Notices were issued
Neither reply nor
any material report
has been received
to which leave
Submitted for order

AM.

JM
AM

CA Filed on behalf
of OP No 6
and RA filed
S.F. C

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(1)

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW.

O.A.NO. 254 1990 (L)

T.A.NO. 19 (T)

DATE OF DECISION 12 September 1990

Pradeep Kumar Mishra PETITIONER

Sr. B. Salomon Adv. Advocate for the
Sr. M. Dubey Adv. Petitioner (S)

VERSUS

Sr. Union Glaxo & others RESPONDENT

S. V. K. Chowdhury Adv. Advocate for the
Mrs. A. K. Adv. Respondent (S)
S. D. Singh Adv.

CORAM :

The Hon'ble Mr. Justice K. Mallik Jc

The Hon'ble Mr. M. M. Singh Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
2. To be referred to the Reporters or not ? yes
3. Whether their Lordship wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to other Benches ? yes

JUDL. MEMBER.

ADM. MEMBER. H. H. Singh

12/9/90

Ms/

Revised
14/9/90
27/11/90

Central Administrative Tribunal, Circuit Bench,

Lucknow.

Registration (O.A. No. 254 of 1990)

Pradeep Kumar Misra

... Applicant

Vs.

Union of India & others

... Respondents

Hon'ble Mr. Justice K. Nath, VC,

Hon'ble Mr. M.M. Singh, AM

J U D G M E N T

(delivered by Hon'ble Mr. M.M. Singh, AM)

1. The issue that arises for decision in the above application filed under Section 19 of the Administrative Tribunals Act, 1985, is whether the applicant substitute Extra Departmental Delivery Agent (EDDA) is a workman under the Industrial Disputes Act, 1947.

2. The applicant's case is that having been appointed by Sub-Divisional Inspector (Postal) Central Sub-division, Hardoi, (respondent no. 4) he worked as EDDA of Hariawan in spells from 10-01-1987 to 18-12-1987, from -01-08-1988 to 31-11-1988, from 01-01-1989 to 31.07-89 and is continuously so working from 01.11.1989. Thus, having put in more than 240 days of continuous service in a year as an employee workman of the Postal Department he cannot be retrenched except by complying with the provisions of Sections 25F and 25N of the Industrial Disputes Act. The respondents substantially do not dispute their approving the name of the applicant for substitute, but dispute the availability of the rights and

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the protections claimed by the applicant. Their case is that the applicant was offered by Shri Ram Sharan Mishra, EDDA of Hariawan when he proceeded on leave on 23-10-1989 which offer was approved. The applicant thus is a substitute and not an employee of the Postal Department and the provisions of the Industrial Disputes Act do not apply to mere substitutes who can be discharged at the will of the approving authority at any time in accordance with the relevant rules of the Postal Department.

3. Shri Dubey, the learned counsel for the applicant submitted that in Kunjan Bhaskaran and others Vs. Sub-Divisional Officer, Telegraph and others (1983 LAB I.C. 135) Kerala High Court decided that the Post and Telegraph Department is an Industry and RMS is held to be an industry in Hari Mohan Sharma Vs. Union of India decided on 30-5-1986 by Jabalpur Bench of this Tribunal. In the Kerala case, the petitioners were casual Mazdoors and in Hari Mohan Sharma case, the petitioner was a daily wager. The counsel placed reliance on the decision of this Tribunal, Calcutta Bench in Ashoke Kumar Sinha Vs. Union of India, 1989, LAB I.C. 670 that services of Extra Departmental Branch Post Master cannot be terminated without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947.

4. Case law is since settled that the Postal Department is an Industry. But the question in this case as mentioned in the beginning is whether the provisions of Section 25F of the Industrial Disputes Act apply to substitute EDDA. The respondents case, as seen in para-3 of the counter affidavit of respondent no. 5 filed on his behalf and on behalf of respondents 1 to 4 is that Ram Saran Misra, EDDA, Hariawan proceeded on leave for 45 days from 23-10-1989 and offered the services of his son, the applicant, as a substitute in accordance with

certificate is stated to be based on the attendance register of Subpost Office, Hariawan. It is not clear to whom was this certificate issued and for what purposes and whether the signatory possesses the authority to issue such a certificate.

5. Coming to the post of substitute EDDA, the real status of the applicant, according to Rule 2(a) of EDA (Conduct & Service) Rules, 1964, an employee means a person employed as an Extra Departmental Agent. According to Rule 2(b)(iii) of these Rules, Extra Departmental Agent means an Extra Departmental Delivery Agent also. According to D.G.'s letter No. 43/15/65-PEN dated 7th June 1968, referred to on page 19 of P. Muthuswamy and V. Brinda's Service Rules for Extra - Departmental Staff in Postal Department (Fourth edition, 1989) an EDA can be authorised not to attend personally to the duty assigned to him by providing a substitute approved by the appointing authority. During such period EDA's authorised absence from duty, the salary and allowances payable to the EDA will be paid to the approved substitute. It is also in the instructions in the above book that the order sanctioning the leave to EDA should also specifically convey the approval of the appointing authority to the substitute working in place of EDA on leave and the order should also make it clear that the substitute may be discharged by the appointing authority at any time without assigning any reason. The appointing authority has also to ensure that such a substitute is not allowed to work indefinitely. The appointing authority should take immediate steps to make a regular appointment in that event and the person so appointed need not necessarily be the substitute. The substitute is not even required to furnish security as when the EDA applies for leave in the prescribed form, he undertakes to be responsible for the

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Central Administrative Tribunal, Circuit Bench,

Lucknow.

Registration (O.A. No. 254 of 1990)

Pradeep Kumar Misra

... Applicant

Vs.

Union of India & others

... Respondents

Hon'ble Mr. Justice K. Nath, VC,

Hon'ble Mr. M.M. Singh, AM

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do not deem it necessary to address ourselves to the allegations of malafide, malpractices and nepotism the applicant has made in the matter of selection of respondent No. 6.

6. In view of the above, the application is dismissed without any order as to costs and the status quo for a period of 14 days ordered on 13-8-1990 and continued upto 31-8-1990 by order dated 28-8-1990 and extended by order dated 31-8-1990 is lifted with immediate effect.

M M L.
(A.M.)


(V.C.)

Dated : Lucknow


September 12, 1990

ES/

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M M L.
(A.M.)


(V.C.)

Dated : Lucknow

September 12, 1990

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(A) (B)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,
LUCKNOW.

D.A. No. 254 of 1990 (C)

Pradeep Kumar Misra Applicant
Versus
Union of India & Others Respondents

I N D E X

Sl. No.	Description of paper	Page No.
<u>COMPILATION I</u>		
1.	Application	1 to 9
2.	<u>Annexure No. 1</u> True copy of order dated 30.7.90	10 to -
3.	VAKALATNAMA	11 to -
4.	Postal order for Rs.50/-	
<u>COMPILATION II</u>		
5.	<u>Annexure No. 2</u> True copy of the certificate dt. 10.8.90 issued by S.P.M., Hariawan, Distt. Hardoi, showing his employment from 10.1.87.	12 to -
6.	<u>Annexure No. 3</u> True copy of the applicant's representation dated 25.7.90.	13 to 14
7.	<u>Annexure No. 4</u> True copy of letter dated 20.7.90 addressed to Supdt. of Post Offices by Block Pramukh, Hariawan, Distt. Hardoi	15 to -
8.	<u>Annexure No. 5</u> Photo copy of Employment Exchange, Registration card.	16 to -

Lucknow :

Dated : 12.8.90

COUNSEL FOR APPLICANT

For use in Registrar's office

1. Date of filing
2. Registration No.

Signature of
Registrar.

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Filed today
Sya
13/8/90

(A11)

~~12/12~~

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2. Jurisdiction of the Tribunal:

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

3. Limitation :

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

4. Facts of the case:

(i) That this application is directed against the order dated 30.7.90 passed by respondent No. 4 which is Annexure No. 1 to this application.

(ii) That the applicant has been working off and on in leave and casual vacancies as EDDA at Post Office Hariawan, District Hardoi for the last several years and at present he has been working continuously on the said post from 1.11.89. The work and conduct of the applicant has all along been satisfactory during the period of his employment without any complaint or adverse comment, whatsoever. A true copy of the certificate dated 10.8.90 issued by S.P.M., Hariawan, Distt. Hardoi showing his employment from 10.1.87 onwards is Annexure No. 2.

(iii) That the applicant is fully qualified for the said post of EDDA. He has passed High School and Intermediate examinations of U.P. Board, and has also passed B.A. Part II from Kanpur University.

gaining time

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- (iv) That the applicant is an employee as defined under Rule 2(a) of P&T EDA (Conduct and Service) Rules 1964 and his appointing authority is the respondent No. 4 who approved his appointment from ~~time~~ time to time in terms of D.G. P&T circular No. 23 dated 24.2.1970 and letters Nos. 43/63/68 Pen dated 27.5.70, 55/72 ED Cell dated 16.8.73 and Department of posts letter No.12-107/88/EDE & Trg. dated 12.9.1988.
- (v) That the applicant is also a workman and being a workman is entitled to the safeguards and benefits envisaged by the Industrial Dispute Act, 1947 and as he has put in more than 240 days' service in a year, he has been in continuous service for one year as defined in Section 25B of the I.D. Act, 1947 and in view of this matter, he cannot be retrenched without following the provisions of Sections 25F and 25N of the aforesaid I.D. Act and without giving notice and opportunity of hearing in the interest of justice. Sections 25F and 25N (ibid) provide certain obligations on the part of the employers to be fulfilled before making retrenchment of any workman who has put in continuous service for not less than one year under Section 25(B).
- (vi) That the respondent No. 4 without considering the services of the applicant and without applying his mind to the provisions of law, has wrongly and abruptly appointed one another person, Sri Manoj Kumar Bajpai against the post held by the

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applicant, by his Memo No. A/Hariawan/90 dated 30.7.90 seeking to dislodge the applicant and thereby causing retrenchment of the applicant in prejudicial, malicious and arbitrary manner. The respondent no. 4 has not given any notice and opportunity of hearing to the applicant. He has not even passed any order in respect of the applicant. The opposite parties 5 and 6 have been pressing the applicant to relinquish his post. A true copy of the order dated 30.7.90 is annexed as Annexure No. 1 to this application.

(vii) That the respondents nos. 4 and 5 in utter disregard of the provisions contained in sections 25(b), 25(F) and 25(N) of the Industrial Disputes Act, 1947 have sought to terminate/retrench the services of the applicant without passing order in respect of him. The action of respondents Nos. 4 and 5 is malicious, arbitrary, illegal and contrary to law.

(viii) That the applicant reliably understands that the respondent No. 5 in connivance with one, Shri Pramod Kumar Shukla, an employee of the Employment Exchange manoeuvred secretly to obtain the name of Shri Manoj Kumar Bajpai, a relative of said Shri Pramod Kumar Shukla to oblige him and through him make his (respondent's No. 5) way easier to make further appointment of his choice after calling names from the Employment Exchange. No notice was given to

to the court for the

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the applicant and all was done secretly. In this connection the applicant submitted a representation dated 25.7.90 to the respondent no. 3 but no action appears to have been taken on it. A true copy of the representation is Annexure 3. It may be stated that the Block Pramukh, Block Hariawan also protested against the prejudicial and motivated action of the respondents nos. 4 & 5 by his letter dated 20.7.90 addressed to the Supdt. of Post Offices, Hardoi endorsing copy thereof to other concerned authorities. A true copy of this letter dated 20.7.90 is Annexure - 4.

(ix) That the Postmaster General, Uttar Pradesh, Lucknow, since designated as Chief Postmaster General has already issued instructions that the cases of substitutes should be considered favourably for regular appointment and while placing requisition to the Employment Exchange, the concerned person working as substitute be informed in order to get his name forwarded by the Employment Exchange office. But these instructions were ignored by respondent No.5 maliciously for oblique motives to have appointment of his choice for personal considerations and ulterior motives. It may be stated that the applicant's name has already been registered with the Employment Exchange, Hardoi on 17.12.88 vide registration No. 7689/88 with Trade Index XD1.20. A photo copy of the registration card is Annexure - 5.

4/2/91 5/2/91 14/2/91

(x) That the applicant is aggrieved by the manner in which the respondents nos. 4 & 5 have manipulated to dislodge the applicant from his post in violation of sections 25B, 25F and 25N of the I.D. Act, 1947 and also by the fact that his representation has not been duly considered by the respondent No. 3 and the prejudicial, biased and arbitrary actions of the respondents nos. 4 and 5 has not been checked and remedied.

(xi) That the applicant has no remedy except to file this application before this Hon'ble Tribunal for redressal of his grievance.

5. Grounds for relief with legal provisions:

- (a) Because the applicant has been sought to be divested of his post without any notice and opportunity of hearing.
- (b) Because the applicant has been in continuous service for a year in terms of section 25B of the I.D. Act and in view of this, he cannot be ousted/retrenched without following the mandatory provisions envisaged by sections 25F and 25N of the said Act.
- (c) Because the names of candidates have been called from Employment Exchange secretly and surreptitiously without any notice to the applicant
- (d) Because the case of the applicant has not been dealt within the light of instructions issued by the Postmaster General (now Chief Postmaster General) for accommodation of the substitutes

against regular appointment.

- (e) Because the action of the respondents nos. 4 & 5 in trying to oust the applicant is wrong, malafide, malicious, arbitrary, irregular, motivated and illegal.
- (f) Because the appointment of respondent no. 6 by respondent Nos. 4 and 5 is not fair. It is with ulterior motive and infested with personal interest.
- (g) Because no order has been passed in respect of the applicant and he cannot be retrenched/removed without specific order to this effect.

6. Details of the remedies exhausted :

It is stated that no departmental remedy lies against the impugned order as it is not a statutory punishment against which appeal lies. However, the applicant submitted representation to the D.P.S., Bareilly but it proved futile.

7. Matter not previously filed or pending with any other COURT:

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

AIR

~~10/11/90~~

8. Reliefs sought :

In view of the facts mentioned in para 4 above, the applicant prays for the following reliefs:-

- (a) That the impugned order dated 30.7.90 (Annexure-1) be declared to be unjust, unwarranted and irregular and accordingly be quashed.
- (b) That the respondents be directed to take action in accordance with law and instructions issued by the Chief Postmaster General, U.P. Circle, Lucknow and consider the case of the applicant favourably for his regular appointment.
- (c) That the cost of the case be allowed in favour of the applicant as against the respondents.
- (d) That any other order deemed just and proper in the circumstances of the case be passed in favour of the applicant.

9. Interim order prayed for:

It is most respectfully prayed that during the pendency of the case, the operation of the impugned order dated 30.7.90 (Annexure - 1) be stayed and an ad-interim order to the same effect be passed immediately.

10. The application shall be presented personally ~~through~~ through the applicant's counsel.

5/11/90

A18

15/8/90

11. Particulars of Postal order filed in respect of the application fee:

- (a) No. of the postal order : 8
- (b) Name of the issuing Post Office : Lucknow G.P.O.
- (c) Date of issue of Postal Order : 13.8.90
- (d) Name of the Post Office where payable : Allahabad G.P.O.

12. List of Enclosures:

Annexures A-1 to A-5 as detailed in the Index.

Lucknow :

Dated : 12.8.90

M. Dubey
Adv.

Pradeep Kumar Misra

APPLICANT

VERIFICATION

I, Pradeep Kumar Misra, son of Shri Ram Saran Misra, aged about 22 years, EDDA, Hariawan P.O. and resident of Village and Post Office Hariawan, District Hardoi, do hereby verify that the contents of paras 1 to 4, 6 to 7 and 10 to 12 are true to my personal knowledge and paras 5, 8 and 9 are believed to be true on legal advice and that I have not suppressed any material fact.

Lucknow :

Dated : 12.8.90

Pradeep Kumar Misra

SIGNATURE OF APPLICANT.

GOVT. OF INDIA
DEPARTMENT OF POSTS
OFFICE OF THE S.D. POSTAL (CENTRAL) SUB DIV. HARDOI

Memo No. A/Hariawan/90

dt. at Hardoi the 30.7.90

Letter of appointment

Shri. *Manoj Kumar Vajpayee* s/o *Shyam Behari Vajpayee*
village and post Hariawan Distt. Hardoi is hereby appointed
provisionally subject to satisfactory result of police
verification and medical fitness as EDDA Hariawan with
immediate effect. He shall be paid such allowances admissible
from time to time.

Shri. *Manoj Kumar Vajpayee* s/o *Shyam Behari Vajpayee*
shall clearly understand that his employment as EDDA shall
be in the nature of a contract liable to be terminated by
him or by the undersigned by notifying the other in writing
and that he shall also be governed by PRT EDA (Conduct and
service) Rules, 1964 as amended from time to time.

If these conditions are acceptable to Shri. *Manoj Kumar Vajpayee*,
he shall be communicate his acceptance in the
enclosed, *naforma*.

35
Sub-Divisional Inspector (Postal)
Central Sub Division Hardoi
241001

Copy to:-

1. Shri. *Manoj Kumar Vajpayee* s/o *Shyam Behari Vajpayee*
village and post Hariawan Distt. Hardoi for information.
2. The Postmaster Hardoi.
3. The S.D. Hariawan Hardoi.
4. The ^{man} Overseer Hardoi for transferring the charge of EDDA
Hariawan (Hardoi) after completing usual formalities.
5. i/c.

24/08/90

Shri. S. S. S. S. S.
True copy
M. S. S. S. S.
24/8

व अदालत श्रीमान

C.A.T Circuit Bench Melunon

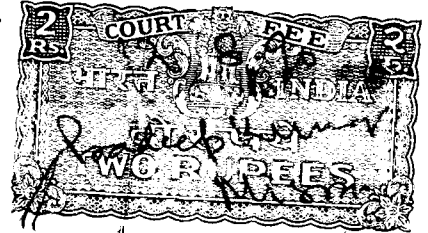
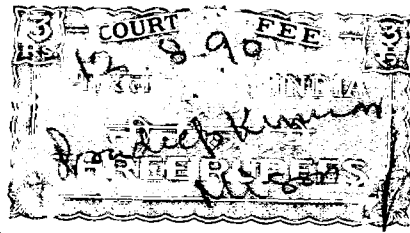
महोदय

★ [वादी] अपीलान्त

श्री Pradeepkumar Mison

का वकालतनामा

प्रतिवादी [रेस्पान्डेंट]



Pradeepkumar Mison बनाम

U09 & others

प्रतिवादी (रेस्पान्डेंट)

मुकदमा नं०

सन्

पेशी की ता०

१६

ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री B. Solomon, Advocate, High Court

Andrew and M. Dube, Advocate, 4th Lane
Kawaiya Ganesh Gangi Melunon

वकील
महोदय
एडवोकेट

नाम अदालत	मुकदमा नं० नाम	फरीकन	बनाम
.....

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पंरवी व जबाबदेही 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 हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें-वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा छपर मुकदमा अदम पंरवी 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
B. Solomon, Adv.

हस्ताक्षर Pradeepkumar Mison

(2) M. Dube, Adv.

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

12.

महीना

8

सन् १९९० ई०

(825)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,
LUCKNOW
O.A. No. of 1990
Pradeep Kumar Misra versus Union of India & Others
ANNEXURE No. 2

[Handwritten signature]

प्रमाणित किया जाता है कि श्री प्रदीप कुमार मिश्रा
की नियुक्ति 12.8.87 से 31.11.88 तक
उक्त स्थान पर, हरियाणा में कार्य किया है।

10-1-87 से 18-12-87
1-8-88 से 31-11-88
1-1-89 से 31-7-89
1-11-89 से continuous-

Verified according Attendance Register
at Haryanawar subpost office Haryana

[Signature]
10-8-90

रूप दास
हरियाणा (सहायक)
पिन-241405

प्रमाणित किया जाता है

Attested
True copy
by
Haryana

श्रीमान जस्टिस जनरल पीएल सेविज वरेली

विषय
S.P.I. सिन्ड्रेल एडवोकेट का मनवानी करना

श्रीमान सेवा में

निवेदन है कि प्रार्थी ने पिता श्री रामशरण मिश्रा पो. होशपारवा

में F.V पोस्ट में के पद पर कार्यरत थे। सन 82, में डिपार्टमेंटल पोस्ट में के इन्वोल्वमेंट में पाए जाये थे परन्तु अन्तिम लेटर में के कारण पिता जी को डिपार्टमेंटल पोस्ट में का पद नहीं मिला बहुत ही परेशान तथा निरंतर पड़ी करने पर सन 89, में डिपार्टमेंटल पोस्ट में

पद पर कार्य कर रहे थे। प्रार्थी की मुझे करीब 500 रु. होशपारवा में F.V पोस्ट पर कार्यरत हैं। अला पता चलाने में E.V जगह के लिए श्री देवकली प्रसाद S.P.I. सिन्ड्रेल ने अपने व्यक्तिगत रूप से कुछ अपने मन्डी डेट लगाने के लिए उपलब्ध हैं। प्रार्थी की नियमानुसार निम्नी सूचना देना चाहते हैं परन्तु निम्नी की अला प्रमुख, होशपारवा आना इन्चार्ज राम प्रसाद तथा सव पोस्ट मास्ट के निम्नी की सूचना न देना केवल इन्चार्ज में इन्चार्ज हैं। केवल नाम निकलवाना अपनी कच्ची कागज पूरा किया गया शायद पूरा करके ही जगह के विषय में लोगों की जानकारी बात-चीत में बताया जिससे अब निम्नी की व्यक्ति प्रार्थी ने पता न देकर इसी तरह शक अपना ही मन्डी डेट विषय में लिखा जा रहा है। प्रार्थी का कहना है कि प्रार्थी को जगह का अपाईमेंट होता था उसी तरह से ही निम्नी जारी करके ही जगह का अपाईमेंट होता था उसी तरह से ही निम्नी जारी करता के जगह की पूर्ति करवाने की कृपा करें

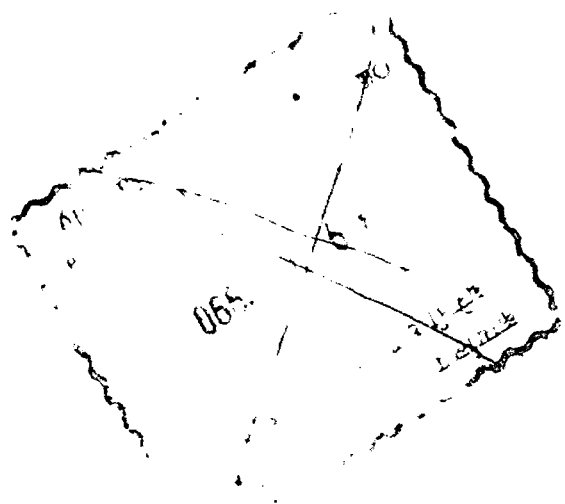
प्रदीप कुमार मिश्रा

(3)

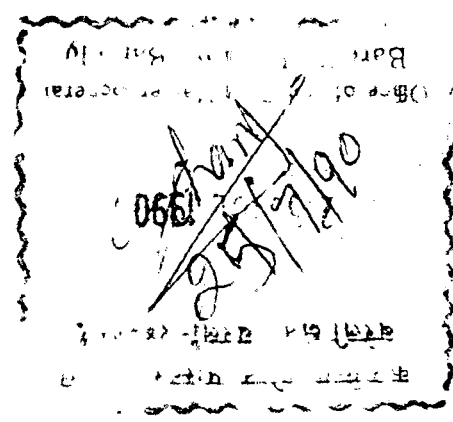
A23

(14)

प्राणी को E.D पीएल का पूर्ण रूप से अनुभव भी हो चुका
 है तथा साथ इमरदारी के डिपुटी का कार्य भी सम्भालता
 है। - है इसी दशा में प्राणी की प्राणियाँ हैं कि
 S.P.I. सिविल सर्विस की मजदूरी को बढ़ाकर
 कुछ सुचारु रूप से नीटसे जारी रखने की सुधा
 करेगी तब तक प्राणी को भी दो शीटों का अवसर
 प्राप्त हो लगे गा आप से इस शरीर की विनम्र प्राणियाँ
 हैं कि प्राणी की प्राणियों पर जो विचार करते हुए
 ब दया करें वो प्राणी आप का आजीवन आभारी रहेगा।



प्राणी
 प्रदीप कुमार मिश्रा
 E.D.P.A प्रि. सहायक
 जि. सर्विस
 ना. 25-7-90



प्रदीप कुमार मिश्रा

Attested
 me by
 M. Subbaraj
 12/8

(15)

A24

श्रीमान डा. कृष्ण मशहूर,
प्रकाश-हरदोई

विषय:- हरियाणा काक के अखबार में एक स्थान की 0000000 का
रिक्त होना पाया गया, जिसमें एक निरीक्षक केन्द्रीय का
मन्त्र व्यवस्था जो कि कुछ सुनो द्वारा प्राप्त हुआ ।

महोदय,

मेला में निवेदन है कि अखबार हरियाणा में एक पोस्ट
00000000 की रिक्त होना पाया गया है जिसमें निम्नलिखित
की तरफ से काक प्रमुख, प्रधान, काका, धाना इत्यादि तथा सम्मानार्थ
के जिये सुचनार्थ नोटिस भिजवाकर लगाने देना चाहिये था। परन्तु
हमारे दर महोदय ने ऐसा न करते हुये नोटिसों को गुप्त रखा तथा
कोई भी नोटिसों का उपयोग नहीं किया जिससे आम जनता में
सूचना न पहुंची जिससे अन्य परिवारों को मेला में वंचित किया गया
इससे यह बात होती है कि जिस पार्टी को भी हमारे दर माहव चाहते
हैं उनको का नाम अंकित किया गया । जिससे हमारे दर महोदय
का प्यार पुरा हो सके । ऐसा भी बात हो रहा है कि हमारे
डा. कृष्ण महोदय का भी हाथ है । निहाय का 00000000
पोस्ट को जो कदम मन्त्र उठाया जा रहा है उसको रद्द करने की
सुझाव करें तथा कायदा और कानून के अन्तर्गत नोटिस जारी करवाए
जावे ।

सूचनार्थ तत्परी मेला में पुंनित है।

प्रमुख

का. कृष्ण मशहूर

का. कृष्ण मशहूर
विभागाध्यक्ष हरियाणा
अमर-हरदोई

दिनांक-

प्रतिनिधि सूचनार्थ एवं आवश्यक कार्यवाही हेतु पुंनित -

- 1-गणनीय तत्परी मेला में भारत सरकार नहीं दिखती ।
- 2-श्रीमान पी0एस0जी0 बारी ।
- 3-श्रीमान जी0पी0एस0 पोस्ट मन्त्र बारी ।
- 4-श्रीमान डा. कृष्ण प्रकाश हरदोई ।
- 5-श्रीमान डा. निरीक्षक केन्द्रीय, हरदोई ।
- 6-परममन्त्र व्यवस्था हेतु ।

प्रकाश-हरदोई

Attested
me M. D. D. D.
12/12/90

(16)

ANNEXURE No. 5

Alfred
True & Co
M. Dubois
H&W

A26

[Signature]

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.

CIRCUIT BENCH, LUCKNOW.

M. P. No. 535/90 (2)
C.A. NO. 254/90.

Pradeep Kumar Mishra Applicant.

Versus .

Union of India and others. . . . Respondents.

APPLICATION FOR VACATING THE STAY ORDER
GRANTED EX PARTE IN FAVOUR OF THE APPLICANT

The above named applicant/Opp. Party No.6
most respectfully submit as under :-

That for the facts, reasons, grounds and
circumstances narrated in the accompanying Counter-
Affidavit it is expedient in the interest of justice
to the applicant/Opp. Party No.6 and most respectfully
prayed that this Hon'ble Tribunal may graciously
be pleased to vacate the exparte interim order
granted in favour of the applicant/Opp. Party No.6
And/or pass any other or further order deemed just
and proper in the circumstances of the case in favour
of the applicoant/Opp. Party No.6.

Lucknow :

Dated: August 29th, 1990.

[Signature]
(Amarjit Kaur)
Advocate.

Counsel for the Applicant/
Opp. Party No.6

[Signature]

Filed today
29/8/90

A27

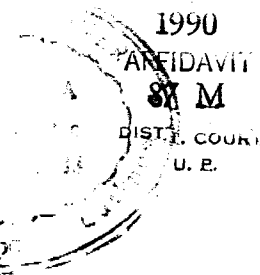
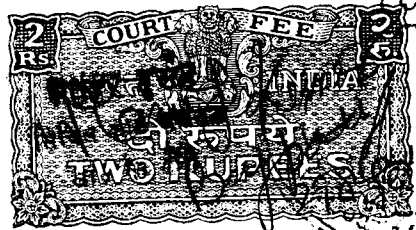
A7
11

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.

CIRCUIT BENCH, LUCKNOW.

C.A. NO.

254/90.



Pradeep Kumar Mishra.

.....

Applicant.

Versus.

Union of India and others.

Respondents.

COUNTER AFFIDAVIT ON BEHALF OF OPP. PARTY NO.6

I, Manoj Kumar Bajpai, aged about 23 years, son of Sri Shyam Behari, Bajpai, resident of Village- and Post Haryawan, District Hardoi, do hereby solemnly affirm and state as under :-

1. That the deponent is Opp. Party No.6 in the abovenoted Application and as such is well conversant with the facts of the case as well as the facts deposed to hereunder :-

2. That the deponent has read and understood the contents of the application filed by the applicant and its reply runs as under :-

3. That according to the applicant himself he was offered as substitute by his own father in the leave vacancy and on different occasions, as per Annexure No.2 to his application, he worked for short duration of

...2

time with considerable breaks.

4. That the deponent who has passed his High School Examination in 1982 in I Division, Intermediate Examination in 1984 in II Division and B.A. Examination in 1987 in II Division has been offered appointment vide Annexure No1 to the application after due and proper selection conducted by the Competent Authority after having invited applications and calling the names from employment Exchange. The applicant who has according to himself served as substitute for short duration of an on according to himself, has no ~~any~~ right or locus standie to challenge the appointment of the deponent which is perfectly valid and lawful and as such non-assailable. That subject to above, the deponent adopts the contents of the C.A. filed on behalf of the Opp. Party No. 1 to 5 narrating authentic facts in regard to the deponent as well as the applicant of the application.

Prd
29/8/90

5. That in view of the facts that the order of appointment validly issued in favour of the deponent is not being enforced on account of the exparte interim order dated 13.8.90 it is ^{20/2} ~~an~~ expedient in the interest of justice to the applicant/Opp. Party No.6 that the interim order concerned may be vacated and discharged by this Hon'ble Court.

20/8/90

6. That the contents of the correspondence between the deponent, Sub-Post Master, Sub Post Office Haryawan, contained in deponent application dated 3.8.90 and 11.8.90 as well as the letter dated 4.8.90 of the Sub-Post Master addressed to Superintendent of Post Offices Hardoi, would show to the Hon'ble Tribunal that the applicant Sri Pradeep Kumar Misra defied the orders of his official superiors and avoided to handover charge to the deponent on the one hand while on the other hand he claimed before the Hon'ble Tribunal in sub-para G of paragraph 5 of the application that no order has been passed in respect of the applicant and he can not be retrenched/removed without specific orders. True copies of application dated 3.8.90, and 11.8.90 and the letter of Sub-Post Master dated 4.8.90 are being annexed herewith as A Annexure No. C.A.F 1, F-2, F-3 to this C.A.

7. That it is relevant to point out here that the applicant having never been issued any appointment letter for his appointment and having been aware of the period for which he was being appointed each time did not need being served with any letter of termination of his services.

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8. That in view of the above the ex-parte interim order granted in favour of the applicant is liable to be vacated.

Lucknow :

Dated: August 29, 1990.

महोदय
Deponent.

msf
28/8/90

VERIFICATION

I, the above named deponent do hereby verify the contents of para 1 to 7 of this C. application are true to my personal knowledge and those of para 8 are believed to be true.

✓
Signed and verified on 29.8.90 in Court premises at Lucknow.

Lucknow :

Dated: August 29, 1990.

महोदय
Deponent.

87 K.
2.35 PM by *Manoj Kumar*
Gupta
A. Kaur
Advocate

I identify the deponent who has signed before me

M. S. Saxena
28/8/90

A. Kaur
Ach.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

C.M. Appn. 525 of 1990 (L),
O.A. NO.254 of 1990(L)

Pradeep Kumar Mishra -Applicant

-versus-

Union of India and others .. Respondents

APPLICATION FOR VACATING THE STAY GRANTED
IN FAVOUR OF THE APPLICANT.

The Respondents above named begs to submit as
under:-

1. That for the facts and circumstances stated
in the accompanying affidavit, ~~the said stay~~
it is expedient in the interest of justice that the
adinterim stay granted to the applicant in the above
noted case by this Hon'ble Tribunal may very kindly be
vacated.

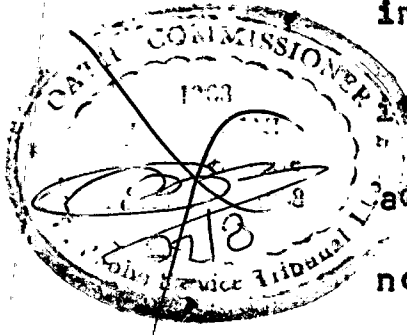
Wherefore it is most humbly requested that
this Hon'ble Tribunal may be pleased to vacate the
adinterim stay granted to the applicant in the above
mentioned case be very kindly be vacated in the ends of
justice.


(VK Chaudhari)

Addl Standing Counsel for Central Govt
(Counsel for the Respondents.1 to 5)

Lucknow,
Dated: 28 August, 1990.

Filed today
28/8



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[Signature]

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW
O.A. NO.254 of 1990(L)

Pradeep Kumar Mishra ... Applicant

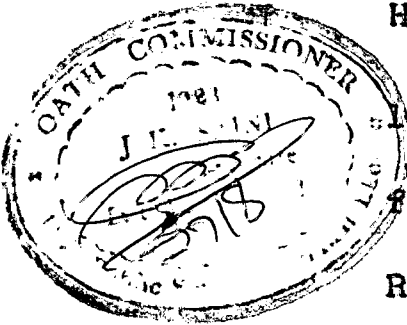
-versus-

Union of India and others ... Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS NOS. 1 to 5.

[Signature] 18/1

I, Deekali Prasad, son of Shri Neebar, aged about 48 years, at present posted as Sub Divisional Inspector, Post offices, Hardoi Central Sub Division, Hardoi do hereby solemnly affirm and state as under:-



1. That the deponent has been authorised to file this counter affidavit on his behalf as well as Respondents nos. 1, 2, 3, 4 & 5, he is respondent nos 4 & 5 to this application.

[Signature] 27-8-90

2. That the deponent has read and understood the contents of the application filed by the applicant and he is fully conversant with the facts of the case and he is in a position to give parawise comments as deposed herein-under:

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

(a) That ~~the~~ Sgri Ram Sharan Mishra EDDA Hariyawan Hardoi, approved candidate of Postman Cadre was allotted to Hardoi Head Office vide Supdt of Post offices Hardoi Memo No.B/Postman/Genl dated 2.2.1989.

Shri Ram Sharan Mishra EDDA Hariyawan Hardoi proceeded on leave for 45 days from 23.10.1989. He offered his substitute Shri Pradeep Kumar Mishra, the applicant his son as per Director General's instructions furnished below leave Rule-5 of EDA(Conduct & Service Rules 1968= that during leave every ED agent should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction the leave to him. Such approval should be obtained in writing. In this regard, the substitute offered by Shri Ram Sharan Mishra, Shri Pradeep Kumar his son was approved on the clear understanding that the substitute may be discharged by the appointing authority at any time without assigning any reason.

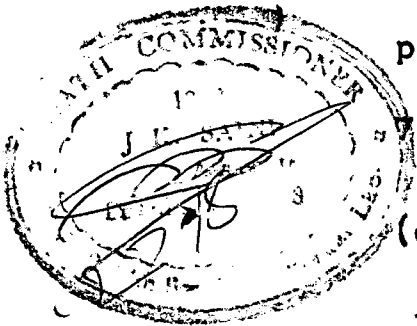
(b) That during the leave, Shri Ram Sharan Mishra


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approved candidate of Postman cadre was engaged at Hardoi HO in the cadre of postman on 6.12. 1989. When it was confirmed that the engagement of Shri Ram Sharan Mishra was confirmed, the employment officer Hardoi was requested to send nomination of the candidate vide memo No.A/Hariyawan/90 dated 30.5.90 for the appointment on the vacant post of EDDA Hariyawan. As per DG's instruction no.4 below leave Rule 5 of EDA's Conduct and service rules 1904. The nomination with 4 candidates was received on 3.7.1990 vide employment officer Hardoi letter No.PO-0803/90/1846 dated 29.6.90. The candidates were served notices under Registered post on 11.7.90 to send their applications within 7 days.

(c) That the applications of willing candidates were received and facts were enquired into the matter and Shri Manoj Kumar Bajpayee was found best of all and was approved for appointment as EDDA, Hariyawan (Hardoi) on 30.7.90. The appointment letter was accordingly issued to concerned for compliance vide Memo No.A/Hariyawan/90 dated 30.7.1990.

4. That the application filed by the applicant is liable to be dismissed as the applicant has not waited for six months after giving the



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representation dated 25.7.1990 contained in Annexure no.3 to the application.

5. That the contents of para 1 to 3 are formal as such needs no comments.

6. That the contents of para 4(i) of the application need no comments.

7. That in reply to the contents of para 4(ii) of the application it is submitted that the applicant was offered purely a substitute to arrange for work vice Shri Ram Sharan Mishra EDDA Hariyawan Hardoi who proceeded on leave for 45 days from 23.10.1989.

The certificate issued by SPM Hariyawan does not seems to be correct as the last period of engagement is from 23.10.89 and not from 1.11.1989.

8. That the contents of para 4(iii) of the application needs no comments.

9. That the contents of para 4(iv) of the application are incorrect as stated, hence denied and in reply it is submitted that the applicant is not an employee but a substitute offered by Shri Ram Sharan Mishra, EDDA Hariyawan to manage his work who proceeded on leave on 23.10.8 1989. The appointing authority has only approve the



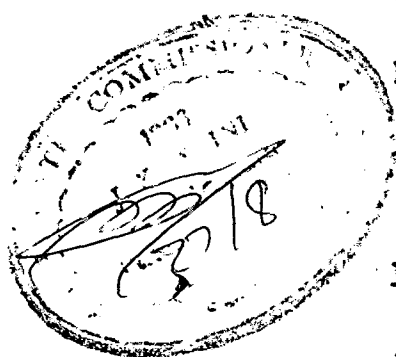
23/10/89
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engagement of the substitute for the purpose of drawing the allowances only to the substitute provided by Shri Ram Sharan Mishra as laid down in P&T General Circular No.23 dated 24.2.1970 and letter No.43/63/69 Pen dtd. 27.5.1970 and No.5-5/72-Cell dated 18.8.1973.

10. That the contents of para 4(v) of the application are incorrect as stated, hence denied and in reply it is submitted that the applicant was offered as substitute by Shri Sharan Mishra to arrange for his work. The rules for 240 days service in a year is not applicable to this casual arrangement. He may be discharged by the appointing authority at any time without assigning any reason.

11. That the contents of para 4(vi) of the application are incorrect as stated, hence denied and in reply it is submitted that the appointing authority has fully adhere to the provisions as laid down in DG's instructions no.4 furnished below leave rules no.5 of EDDA Conduct and Service rules 1964 and did nothing objectionable.

12. That the contents of para 4(vii) of the application needs no comment.



Shri Ram Sharan Mishra
27.8.73
S.D. (C)
Hd.

13. That the contents of para 4(viii) of the application are incorrect as stated, hence denied and in reply it is submitted that the allegations are false and baseless. It was the business of employment officer Hardoi.

14. That the contents of para 4(ix) of the application are incorrect as stated, hence denied and in reply it is submitted that there is no such provision to inform the substitute when placing requisitions to the Employment Exchange to send nominations of candidates.

15. That the contents of para 4(x) of the application are incorrect as stated, hence denied and in reply it is submitted that the applicant is only a substitute provide by Shri Ram Saran Misra to work at his own place and may be discharged by the appointing authority at any time without assigning any reason.

16. That the contents of para 5 4(xi) of the application need no comments.

17. That the contents of para 5(a), (c), (d), (g) of the application needs no comments.

18. That the contents of para 5(b), (e) & (f) of the application are incorrect as stated, hence denied.

19. That the contents of para 6 & 7 of the application needs no comments.

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

21. That the contents of para 8(b) (c) & (d) of the application needs no comments.

22. That the contents of para 9 of the application are not justified and merits rejection.

23. That the contents of para 10 of the application needs no comments.

24. That the grounds taken by the applicant are not tenable in the eyes of law.

25. That in view of the facts and circumstances stated in the foregoing paragraphs, the application filed by the applicant is liable to be dismissed with costs to the Respondents.

[Signature]
Deponent.

Lucknow,

Dated: August, 1990.

27/ [Signature]

Verification.

I, the above named deponent do hereby verify that the

contents of paragraphs 1 & 2 are true to my personal knowledge and those of paras 3 to 23 are believed to be true on the basis of records and information gathered and those of paragraphs 23 to 25 are also believed to be true on the basis of legal advice, and no part of it is false and nothing material has been concealed.


Deponent.

Lucknow,

Dated: 27 August, 1990.

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



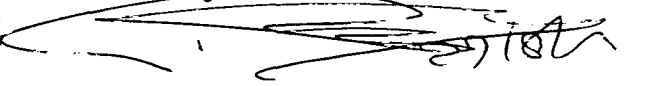
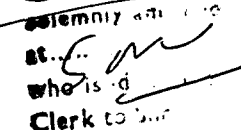
(VK Chaudhari)

Addl Standing Counsel for Central Govt.
(Counsel for the Respondents)

Solemnly affirmed before me

on 27/8/90 at 5⁰⁰ am/pm by the deponent who is identified by Shri VK Chaudhari, Advocate, High Court, Lucknow

Bench, I have satisfied myself by examining the deponent that he understand the contents of this affidavit which have been read over and explained to him by me.


Oath Commissioner.
I have examined the deponent that he has read and understood the contents of this affidavit which has been read out and signed by me. Received Rs. 1-00 on 27/8/90.

Clerk to the Bench.
Date 27/8/90

व अदालत श्रीमान

[वादी] अपीलान्त

प्रतिवादी

श्री

का

वकालतनामा

(टिकट)

वादी (अपीलान्त)

Harjeet Kumar Makhera C.A. 147 254/90

बनाम

प्रतिवादी (रेस्पान्डेंट)

मुकदमा नं०

सन्

पेशी की ता० 28/10/90 ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री बी० के० चौधरी एडवोकेट हाईकोर्ट

ऊपर स्थायी अधिवक्ता भारत सरकार लखनऊ वेन्य, निवास- 98/628 बरफखाना, नईबस्ती अलंकार सिनेमा के पास लखनऊ टेली. न. 238556 हाईकोर्ट चेम्बर न. 98 टेली. न. 280509

(नाम अदालत...)
(मुकदमा नं० नाम...)
(फरीकत... बनाम...)

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवो व जबाबदेही 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 हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकदमा 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 अवे।

स्वीकृत

(बी० के० चौधरी)

एडवोकेट हाईकोर्ट

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

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(Buh) 1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH
LUCKNOW.

O.A.No. 254 of 1990(L)

Pradeep Kumar Misra

... Applicants

Versus

Union of India and others

... Respondents.

F.F. 10.9.90

REJOINDER AFFIDAVIT

I, Pradeep Kumar Misra, aged about ~~22~~ 22 years
s/o Shri Ram Saran Misra, resident of Village & Post
Office Hariyawan, District Hardoi, do hereby state on oath
as under :-

1. That the deponent is the applicant in the above
noted case and he is fully conversant with the facts
deposed to in this rejoinder affidavit. The deponent has
read and understood the contents of counter affidavit sub-
mitted for and on behalf of the respondents nos. 1 to 5
by respondent no. 4 and is replying to the same.
2. That in reply to the contents of para 1 of the
counter, it is pointed out that the respondent no. 4 has
not furnished any authority for filing reply for and on
behalf of respondents nos. 1, 2 and 3. His reply in this
regard is therefore, incompetent and liable to be rejected.
It is further pointed out that respondent no. 5 has been
impleaded in his personal capacity and he has not filed
any separate reply.
3. That the contents of para 2 is denied to the extent
that the respondent no. 4 swearing the counter affidavit
has not furnished any authority to reply on behalf of
respondents nos. 1, 2 and 3 and he is not competent to file
reply for them without specific authority.
4. That in reply to the contents of para 2(a) of the
counter it is stated that the deponent has been working as
ADDA in casual vacancies since long and from the certificate

Pradeep Kumar Misra

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issued by the Sub Postmaster Hariyawan (Annexure A-2), it would be seen that the deponent has been working continuously from 1.11.89 and as such till date he has worked for 307 days during the last one year and prior to that he worked from 10.1.87 to 18.12.87 (343 days) and from 1.8.88 to 31.11.88 (122 days) and 1.1.89 to 31.7.89 (212 days), total 334 days.

Thus the deponent worked for much more than 240 days during last three years ~~making~~ continuously under section 25(B) of the Industrial Dispute Act 1947. When ever the deponent was employed as a substitute, his employment was duly approved by the appointing authority and he drew payment for the period on duty on the Pay Roll, meant for regular employees, which created a relation of master and servant between the respondents and the deponent. Though the approval of the appointing authority for employment of the applicant was to be given in writing each time, but no such written approval was given in contravention of DGP&T instructions.

5. That in reply to paras 3(b) and 3(c) of the counter, it is stated that since the applicant had worked for more than 240 days during the last three years, he was in continuous service in terms of the section 25(B) of the Industrial Disputes Act 1947 and in terms of Section 25(F) he cannot be retrenched without following the provisions contained therein and without having been given one month's notice in writing indicating the reasons for retrenchment. The provisions of section 25(G) and 25(H) of the said Act are also applicable. In view of the said provisions, it was irregular on the part of respondent no. 4 to have called for names from the Employment Exchange for fresh employment and retrench the services of the applicant. Section 25(J) of the I.D. Act 1947 lays down, "The provisions of this Chapter (viz. Chapter V which contains section 22 to 25 J) shall have effect notwithstanding anything in consistent

24.3.1989

therewith contained in any other law (including Standing orders made under the Industrial Employment (Standing Orders) Act 1946(20) of 1946). Thus the provisions of Sections 22 to 25 J have over-riding effect on all other laws and exclude any service law to the contrary. This proposition has been held in 1983 LAB IC 135 Kerala High Court, Kunjan Bhaskaran and others Versus Sub Divisional Officer, Telegraphs Changanassery and others o.P.No.4054 of 1979 dated 28.7.82. It has further been held by the Administrative Tribunal Allahabad, Jabalpur's Bench by its decision in Registration no. M-48(G)T of 1986 dated 30.5.86, Hari Mohan Sharma Versus Union of India and others that P&T is an Industry and Casual Labour cannot be dismissed without notice. Similar view has further been held by the Central Administrative Tribunal, Calcutta Bench in Ashok Kumar Sinha versus Union of India and others T.A.no. 691 of 1986 (CO No. 7600(W) of 1982) dated 8.4.1988, 1989 LAB IC 670 that termination/retrenchment without notice under Section 25F of Industrial Disputes Act 1947 was bad in law. It was held earlier by the Supreme Court (AIR 1960 Supreme Court 610 (V47C95) (From Bombay) in State of Bombay and others versus The Hospital Mazdoor Sabha and ~~others~~ others that without following the provisions of I.D.Act 1947 the retrenchment order is invalid and inoperative. The action taken by the respondents no. 4 & 5 is, therefore, arbitrary, perverse, malicious, prejudicial, illegal and null & void.

6. That the contents of para 4 of the counter are denied as stated. The action taken by the respondents no. 4 & 5 is ultravires and ab-initio void and cannot be sustained. Since the respondents no. 4 & 5 and 6 and their men were trying to divest the deponent of his post/illegal even under threat of force, the deponent had no alternative except to approach this Hon'ble Tribunal for shelter by passing appropriate order.

7. That paras 5 & 6 of the counter need no reply.

5/11/82 (3/11/82)

8. That in reply to the contents of para 7 of the counter, it is stated that the certificate of employment of the deponent, issued by the Sub Postmaster Hariyawan vide Annexure A-2 to the application is based on records and it has not been disputed except that the last engagement of the applicant was from 29.10.89 and not from 1.11.89 which too is not to discredit of the deponent as that would provide a longer span of service ^{than} ~~there~~ what it is stated in para 4 above. In any case, the employment of the deponent as EDDA for the periods shown in Annexure A-2 has not been disputed or questioned.

9. That para 8 of the counter needs no reply except that averment made in para 4(iii) of the application would show that he is fully qualified for the post.

10. That the contents of para 9 of the counter are denied as stated. It is stated that the employment of the deponent was approved by the appointing authority in terms of DG P&T instructions and he worked under the supervision and control of the Postal authorities and drew his wages from the Postal Department on the pay bill like all other regular employees which constituted a relationship of master and servant between the Department and the applicant. It is incorrect to say that the deponent is not an employee. The definition of employees given in Rule 2(9) of EDA (Conduct & Service) Rules 1964 lays down -

2(a) 'Employee' means a person employed as an extra Departmental Agent -

and vide Rule 2(b) Extra-Departmental Agent means besides several categories of staff, an extra Departmental Delivery Agent (2(b)(iii)) which the deponent is and this position cannot be questioned or contraverted.

11. That the contents of para 10 of the counter are denied as stated. The averments made in para 5 above would show that the P&T Department is an industry to be governed by the I.D. Act 1947 and Rules of 240 days in a year is applicable in the instant case. It is incorrect to say that the deponent.

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can be discharged by the appointing authority at any time without assigning any reason. The ID Act 1947 is applicable in the case of the deponent and he cannot be ousted/retrenched without following the provisions of law as laid down in the act, specially 25F, 25G and 25H. The rest of the contents of para under reply is denied and those of para 4(V) of the application are re-iterated.

12. That in reply to the contents of para 11 it is stated that the appointing authority did not comply with the provisions envisaged under section 25F, 25G and 25H. His action was malicious, arbitrary, irregular and illegal. The contents of the para under reply are denied as stated and those of para 4(vi) of the application are re-asserted.

13. That para 12 of the counter does not offer any comment on para 4(vii) of the application, which is presumed to have been admitted and in view of this matter the application of the applicant is liable to succeed. The contents of para 4(vii) of the application are re-iterated.

14. That the contents of para 13 of the counter are denied as stated and those of para 4(viii) of the application are re-asserted.

15. That the contents of para 14 of the counter are denied as ~~stated~~ stated. It is to be stated that the BMS Service Union raised the issue in one of its meeting with the PMG that the substitutes alone should be given the benefit of appointment against permanent/temporary or provisional appointment and the PMG took the decision that such of the substitutes who fulfil requisite qualification and other conditions and whose name has been received from the Employment Exchange, should be given a generous consideration. A photo copy of circular issued by the PMG vide his no. staff/M-140/Union/86/14 dated 23.2.87 is Annexure R-1. It may further be stated that on further representation by the Union that the list from the Employment Exchange is obtained without giving any opportunity to the substitutes to have their names forwarded, it was decided by the PMG that the

22/4/87

AUG

11/11/21

substitutes should be informed in advance while calling for names from the Employment Exchange. A copy of such instruction though, seen by the deponent, is not available with him and it would be expedient in this interest of justice that the respondent no. 2 be directed to produce the same. The contents of para 4 (ix) of the application are re-asserted.

16. That the contents of para 15 of the application are reiterated. ~~The contents of para 15 of the application are denied as stated and the contents of para 4(x) of the application are re-iterated.~~ The deponent cannot be retrenched/ousted from his post without notice and following the procedure of I.D. Act and other labour laws.

17. That in reply to the contents of para 16 of the counter it is stated that the contents of para 5(a), (c), (d) and (g) of the application have not been controverted.

18. That the contents of para 18 of the counter are denied as stated and the contents of para 5(b), (e) and (f) of the application are re-asserted.

19. That the contents of para 19 of the counter need no reply.

20. That the contents of para 20 of the counter are denied as stated and those of para 8(a) of the application are re-iterated.

21. That para 21 needs no reply.

22. That the contents of para 22 of the counter are denied as stated and the contents of para 9 of the application which are tenable, just and based on merit are re-stated.

23. That para 23 of the counter needs no reply.

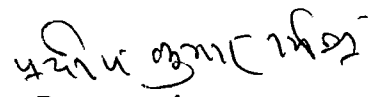
24. That the contents of para 24 of the counter are denied and it is stated that the grounds taken by the deponent are tenable, cogent, sound and justified.

25. That the contents of para 25 of the counter are denied as stated. On the facts and circumstances stated in the application as well as in this rejoinder affidavit,

11/11/21

the application filed before this Hon'ble Tribunal is sustainable and deserves to be allowed with costs against the respondents and in favour of the deponent.

LUCKNOW


Deponent


Dated : 2.9.90

VERIFICATION

I, the above named deponent, do hereby verify that the contents of paras 1 to 19, 21, 23 and 24 are true to my knowledge and those of paras 20, 22 & 25 are believed to be true. Nothing material has been suppressed and concealed and no part of it is false.

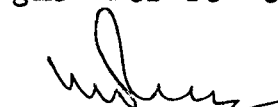
Signed and verified this 2nd day of September, 1990 at Lucknow.

LUCKNOW


Deponent

Dated : 2.9.90

I identify the deponent,
who has signed before me.

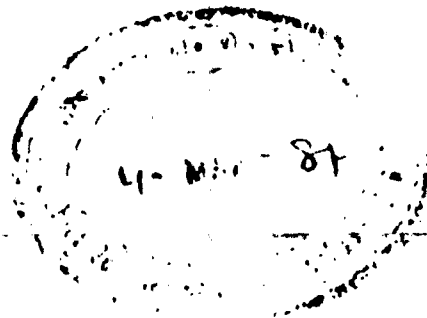

(M. Dubey)
Advocate

In the P.T. Circuit Bench, Lucknow
Pradeep Kumar Mishra vs. UOP Rules
Annexure R-1
254 of 90

प्रदेशीय विभाग

सेवा में,

पोस्ट मास्टर जनरल
उ०प्र० परिणाम
लखनऊ-226001



सेवा में,

- 1- श्रीमान पोस्ट मास्टर जनरल आ०त००/कानपुर
- 2- निदेशक डाक सेवा लखनऊ, कानपुर, इलाहाबाद, देहरादून
- 3- सभी प्रवर अधीक्षक/अधीक्षक डाकघर उ०प्र०
- 4- सभी प्रवर अधीक्षक/अधीक्षक रेल डाक सेवा, उ०प्र०
- 5- पोस्ट मास्टर लखनऊ/कानपुर ।
- 6- युनियन अनुभाग, परि०कौचालय लखनऊ ।

पत्रांक- स्टाफ/एम-140/यूनि०/86/14 लखनऊ दिनांक 23-2-1987

विषय- अतिरिक्त विभागीय कर्मचारियों की भर्ती से सम्बंधित मामले ।

संदर्भ- यूनियन आइटम सं० पी-4-1/10-86/1

परिमण्डल कार्यालय लखनऊ में दिनांक 23-10-86 को एन०एफ०पी०टी०ई० को हुई मीटिंग में यह प्रश्न उठाया गया कि स्थायी/अस्थायी या प्राविजनल नियुक्ति की आवश्यकता अनुभव होने पर केवल ई०डी० एवजीदार को ही वरीयता देकर भर्ती का लाभ देना चाहिए जो वहाँ से एक ई०डी० कर्मचारी के रूप में विभाग की सेवा करते आ रहे हैं और आयु सीमा आदि पार न करने के कारण अब पूरी तरह से विभाग पर ही आश्रित हैं ।

इस सम्बंध में यह निर्णय लिया गया कि वे एवजीदार जो नियुक्ति के लिए सभी योग्यता तथा अन्य शर्तें पूरी करते हैं तथा उनकी नियुक्ति के समय सेवायोजन कार्यालय से उनके नाम प्राप्त हुए हों, उनको उनकी नियमित नियुक्ति के समय उदारता पूर्वक विचार किया जाय ।

पोस्ट मास्टर जनरल, उ०प्र०

AS2

IN THE GENERAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH
LUCKNOW

G.A. No. 254 of 1990(L)

Pradeep Kumar Misra

... Applicant

Versus

Union of India and others

... Respondents

F.F. 10.9.90

REQUIRED AFFIDAVIT

I, Pradeep Kumar Misra, aged about 22 years, son of Shri Ram Narayan Misra, resident of Village & Post Office Hariyawan, District Barabanki, do hereby state on oath as under :-

1. That the deponent is the applicant in the above noted case and he is fully conversant with the facts deposed to in this rejoinder affidavit. The deponent has read and understood the contents of counter affidavit submitted by respondent no. 6 and is replying to the same.
2. That para 2 of the counter needs no reply.
3. That the contents of para 3 of the counter are denied as stated. The deponent worked for more than 3 years continuously in terms of section 25(3) of the Industrial Disputes Act 1947 as would be apparent from the certificate A-2 to the application.
4. That the contents of para 4 of the counter are denied as stated. There was hardly any necessity of calling for names from the Employment Exchange without first deciding the case of the deponent in terms of section 25(3), 25(F) and 25(1) and 25(2) of the I.D. Act and without passing any specific order in respect of the deponent. The deponent could/can not be retrenched without following the procedure as laid down in the said sections of the Act. The action of the respondents no. 4 & 5 in calling for the names from the Employment Exchange and ordering appointment of the respondent no. 6 in violation

प्रदीप कुमार मिश्रा

)

3

प्रमाण कुशल
Deponent

VERIFICATION:

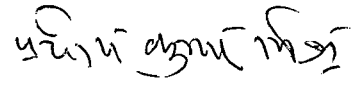
I, the above named deponent, do hereby verify

that the contents of paras 1 to 7 are true to my knowledge and those of para 8 are believed to be true. Nothing material has been suppressed and no part of it is false. So help me GOD.


Signed and verified this 2nd day of September, 1970 at Lucknow.

LUCKNOW

Dated : 2.9.70


Deponent

I identify the deponent who has signed before me.


(M. Dubey)
Advocate