

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

~~OA/TA/RA/CP/MA/PT~~ 306 of 2990

.....Supt. of Post offices..... |.....Applicant(S)

Versus

.....(09) Han versus Respondent(S)

INDEX SHEET

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Certified that the file is complete in all respects.

B&G files and account & destroyed *[Signature]*

Signature of S.O.

Signature of Deal. Hand

OA, NO. 306190

Supdt. of Post office

Union of India (Labour)

① ✓ A1 - A2

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③ ✓ Final return & posted A7 - A9 DT. 17.12.92

④ ✓ ~~Post office~~ A10 - A24

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~~Remaining~~ ~~.....~~

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Chk'd. 4/1993
6/1/93

22.9.93

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing 10/9/90
Date of Registry by Post 10/9/90
Deputy Registrar (J) 20/9/90
S.Y.P. A
20/9

Registration No. 306 of 1989 (L)

APPLICANT(S) Supdt. of Post offices

RESPONDENT(S) Lucknow Division, U.K.

| | <u>Particulars to be examined</u> | <u>Endorsement as to result of examination</u> |
|-----|--|--|
| 1. | Is the appeal competent ? | yes |
| 2. | a) Is the application in the prescribed form ? | yes |
| | b) Is the application in paper book form ? | yes |
| | c) Have six complete sets of the application been filed ? | yes |
| 3. | a) Is the appeal in time ? | yes |
| | b) If not, by how many days it is beyond time ? | N.A. |
| | c) Has sufficient cause for not making the application in time, been filed ? | yes |
| 4. | Has the document of authorisation/ Vakalatnama been filed ? | yes |
| 5. | Is the application accompanied by B.O./Postal Order for Rs.50/- | yes . postal order sc/ |
| 6. | Has the certified copy/copies of the order(s) against which the application is made been filed ? | yes |
| 7. | a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ? | yes |
| | b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ? | yes |
| | c) Are the documents referred to in (a) above neatly typed in double space ? | yes |
| 8. | Has the index of documents been filed and pagining done properly ? | yes |
| 9. | Have the chronological details of representation made and the outcome of such representation been indicated in the application ? | yes |
| 10. | Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal ? | no |

Particulars to be ExaminedEndorsement as to result of examination

11. Are the application/duplicate copy/spare copies signed ?

only Main copy

12. Are extra copies of the application with Annexures filed ?

yes

a) Identical with the Original ?

yes

b) Defective ?

x

c) Wanting in Annexures

Nos. _____ pages Nos. _____ ?

13. Have the file size envelopes bearing full addresses of the respondents been filed ?

N.A.

14. Are the given address the registered address ?

yes

15. Do the names of the parties stated in the copies tally with those indicated in the application ?

yes

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?

N.A.

17. Are the facts of the case mentioned in item no. 6 of the application ?

given now

a) Concise ?

yes

b) Under distinct heads ?

yes

c) Numbered consecutively ?

yes

d) Typed in double space on one side of the paper ?

yes

18. Have the particulars for interim order prayed for indicated with reasons ?

yes

19. Whether all the remedies have been exhausted.

S
given
10/9

dinesh

Per up. before
Per. of. available 10.9.90
fee on 14
Recd. 21.9.90
10/9

(1)

(1)

A3

4.9.1990

O.A.NO.306/90(I)

Hon'ble Mr. Justice K.Nath, V.C.
Hon'ble Mr. M.M.Singh, A.M.

See
 original
 order on
 main
 petition

Admit.

Issue notice to respondents to file counter within four weeks to which the applicant may file rejoinder within two weeks thereafter.

In the matter of interim relief issue a notice and list for orders on 15.11.90.

Sd/

A.M.

Sd/

V.C.

Notice issued
 L 21-9-90

Sd/

⑦ 15-11-90 Hon Mr. Justice K.Nath, V.C
 Hon Mr. M.Y. Pradhan, A.M. OR

Shri VK Chaudhary as applicant. Notices were issued
 Shri T.N. Gupta as respondent on 21.9.90
 Shri Gupta files counter. Neither reply nor
 and also raises two any unisoned repd.
 preliminary objections. cover has been return
 C. P. O.

It is stated that the award
 was made ex parte and the
 applicant had made a remedy
 by moving the Labour Court and

② that before this could effect the
 applicant must pay the wages of
 the previous period in view of section
 17B of Industrial disputes Act.

Put up for orders on 22.11.90
 when the case may be disposed
 of finally.

AM

AM

V.C.

Neither reply on
 behalf of OP No. 122
 nor R.A. on behalf
 of No 3 have been
 filed.

S.R.L.

28-11-91

6

7

DA 306/90(2)

Hon Mr. Justice K. N. KHILWAT
Hon Mr. M. M. Singh, A.M.

Al

Smti V. K. Chaudhary for applicant
Shri T. N. Gupta for respondents.

Counts has been filed. Shri V. K. Chaudhary says that no rejoinder has been filed. We have heard the learned counsel for the parties in the matter of interim relief. We agree ^{with} ~~that~~ the learned counsel for the ^{respondent} ~~applicant~~ that under section 173 of Industrial Disputes Act, the applicant must pay to the respondent "full wages" last drawn" by the respondent from the date of institution of the present application till the entire period of pendency of this case. It will be open to the applicant to take or not to take work from the respondent, but the proceedings for recovery of the amount awarded shall remain stayed. The amount as indicated hereinafter will be paid by the applicant to the respondent within 2 weeks and the payment will continue to be made by the 10th of the succeeding month before D.R. or 16-1-91 for fixing a date of final hearing.

Received copy
B. N. K. K.
B. S. T. S.
11/11/91

Received copy
B. N. K. K.
B. S. T. S.
11/11/91

M. K. Joshi
A.M.

R. V.

(3)

O.A. 306/90

(10)

13.3.91

D.R.

AS

No appearance has been made on behalf of the applicant's side. Department's side is present. Reorder has not been filed till today. Applicant to file rejoinder by 30.4.91.

(11)

30.4.91

D.R.

Respondent's side is present. Applicant is absent today. He did not file rejoinder till today. He is ordered to file it by 12/7/91.

(12)

12.7.91

D.R.

Sri V.K. Chaudhary appeared for the applicant's side and he seeks 3 weeks further time for filing Rejoinder so he is ordered to file it by 11/8/91. Case is listed on 18/8/91. O.P. is absent.

306-902

AL

For Justice V.C.S
For Mr. A.B. Gopal Ayy.

Put up tomorrow

I

AM

VC

11-12-91

Due to Sad demise of

Sh. B. D. Chakrabarti (Adv.)

Case is adj. to 10.2.92

M.P. 582/91

has filed by Adv. No
3 for expert order
without filing P.R.

B.O.C.

R

SAC

262 ac

10.2.92

No. Sitting adj. 3.3.92

8

3.3.92

With Mr. Justice V.C. Sreedharan
With Mr. A.B. Gopal Ayy.

None present. adj. election of
Mr. Justice C. Sreedharan adjourned to

20.4.92

AM

UR
UR

28.4.92

No. Sitting of D.B. adj. to
14.5.92

8

14.5.92

No. Sitting of D.B. adj.
to 2.7.92

8

2.7.92

No. Sitting adj. to
17.8.92

8

17.8.92

No. Sitting of D.B. adj. to
24.9.92

8

A7

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

O.A. No. 306/90

Superintendent of Post
Offices, Lucknow Division
Lucknow

Applicant

versus

Union of India & others

Respondents.

Shri V.K.Chaudhary Counsel for Applicant.
Shri T.N. Gupta Counsel for Respondents.

Coram:

Hon. Mr. Justice U.C.Srivastava, V.C.
Hon. Mr. K. Obayya, Adm. Member.

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

The applicant has approached this Tribunal against the ex parte award given by the Presiding officer labour court. It appears that the respondents approached the labour Court with the prayer that the applicant's services have been illegally terminated. Union of India put in appearance before the Presiding officer, Labour court and submitted ~~that~~ the written statement and was stated that the applicant (now respondent No. 3) / never appointed by the department but worked as a substitute on the security and responsibility of regular extra departmental agent Sri Ram Plat during the following period:

- i) From 16.7.82 to 30.10.82
- ii) From 10.11.82 to 10.5.83

4

iii) From 1.6.83 to 31.1.84

iv) From 13.2.84 to 31.5.84

v) From 9.10.84 to 20.12.84

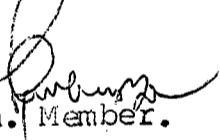
vi) From 22.12.84 to 30.4.85

(now respondent No. 3)
and thereafter the applicant/also worked from 1.5.85
to 23.5.85 as a substitute of Shri Triveni Prasad Yadav
on his responsibility. He was never appointed regularly
in the department and as such there was no question
of retrenchment and he cannot be treated a regular
employee and the appointments are only made through the
agency of Employment Exchange and plea of jurisdiction
has been raised. No appearance was put in by the
respondents and ex parte award was passed and the
presiding officer did not look into the written
statement and he considered the question of jurisdiction
as to whether in the matter of E.D.B.P.Ms he has any
jurisdiction or not and whether it could be said an
Industrial Dispute and he even went to the extent of
saying that provisions of section 25 F of the Industrial
Disputes Act have not been complied with and the
applicant(respondent No. 3) was entitled to full back
wages. Obviously it was a matter which should not have
been entertained. As a result of the award the respondent
No. 3 has been taken back in service. The award was that
the respondent was to be taken back in service as a

iv

substitute and nothing more. The respondent No. 3 has got no right to get back wages. In view of the fact that the respondent No. 3 is working, the award is partially quashed as far as back wages are concerned and the respondent ^{No. 3} will be paid as substitute and not more i.e. in the capacity in which he is engaged. With this modification the application is partially allowed. However, in view of the fact that the respondent No. 3 is working, his case for regular appointment can be considered if the cases of other substitutes who entered the department after him have been considered and even otherwise his case can now be considered and there is no bar.

2. The application is disposed of with the above observations. No order as to costs.


Adm. Member.


Vice Chairman.

Shakeel/-

Lucknow: Dated 17.12.92.

In the Central Administrative Tribunal, Circuit
Bench Lucknow.

M.P. No. 582/91 (L)
306
O.A. No. 5125 of 1990 (L)

Superintendent Post Officers _____ Applicant

Versus

Union of India & others _____ Opp. Parties

APPLICATION ON BEHALF OF OPPOSITE PARTY NO. 3

FOR LISTING CASE BEFORE BENCH OF THIS WEEK.

Sir,

The opposite party No. 3 begs to submit as
under :-

That in his above noted case counter affidavit
was filed on 15.11.90 but since then inspite of
repeated time the Rejoinder have not been
filed till today.

That Similar case Opposite party No. O.A. No.
188-1988 (L) Ram Kumar Versus Union of India has
been decided on 07.5.91 by Hon'ble Justice U.C.
Srivastava v.c. Hon'ble Mr. A.B. Gorthi (Member
(A)).

3. That delay is unwanted in ~~his circumstances~~ cited above.

WHEREFORE it is most humbly prayed that case may
kindly be listed before the Bench of this week on 19.9.
91 or 20.9.91 for securing the ends of Justice &
equity.

Dated: 18.9.91

T. N. Gupta
Advocate

For opposite Party no. 3

Form - I

(See Rule - 4)

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT 1985.

I N D E X.

Description of documents relied
upon.

Page No.

Application:



Signature of applicant
For the office in Tribunal's office.

Date of filing

of

Date of Receipt by post

Registration No.

Signature
for Registrar.

No

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

C.A. No. 306 of 1990. CL,

Q.M. Supdt of Post Offices,
Lucknow Division, Lucknow

... Applicant

-vs-

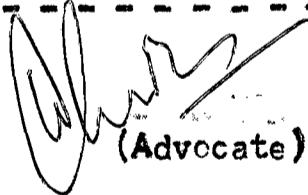
Supdtxxxx

Union of India and others

... Respondents

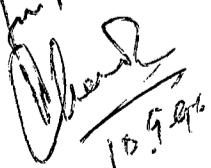
I N D E X.

| Serial N ^{o.} | Particulars | Page Nos. |
|---|---------------|-----------|
| | Complaint 'A' | |
| 1. Application | | 1 to 13 |
| 2. Annexure no.1 (True copy of order dated 19.1.90) | | — 14 p15 |
| 3. Annexure no.2 (True copy of written statement of in support of claim of Respondent no.3) | | 16 to 18 |
| 4. Annexure no.3 (True copy of written statement filed by the Applicant before the Industrial Tribunal) | | 19 |
| 5. Power | | |


(Advocate)

Filed today
Smt R
20/19

Lucknow, 10-9-
Dated: April 1990.

Noted for 14.9.90

10.9.90

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

O.A. No. of 1990 (L)

(Application under Section 19 of the Administrative Tribunals Act, 1985.)

Administrative Tribunal
Circuit Bench, Lucknow

Date of Filing ... 10/9/90
Date of Receipt by Post

10/9/90
Deputy Registrar

Supdt. of Post Offices,
Lucknow Division,
Lucknow.

Applicant

-vs-

1. Union of India through Secretary,
Ministry of Labour,
Shram Sakti Bhawan,
New Delhi.
2. Central Government Industrial Tribunal
Cum-Labour Court,
117/H-1/378-A, Deekhi Palace Road,
Pandu Nagar, Kanpur - through its Secretary

3. Shri Suryanath, Adult
S/o Dulham Ram
Resident of 10/2 Old Labour Colony
Aishbagh,
Lucknow.

... Respondents.

1. Particulars of the order against which the Application is made:

Order dated 19.1.1990 passed in

Industrial Disputes Act Case No. 23/89 between Shri Suryanath

प्रधान पोस्ट अधिकारी विभाग प्राप्ति
Senior Supdt. of Posts & F.R.
Lucknow Division

-2-

and Sr. Supdt of Post offices, Lucknow Division,

Lucknow decided by Respondent no.2 awarding

Respondent no.3 full back wages and holding his
termination order dated 23.5.1981 is illegal.

A copy of the said order is being filed herewith
as Annexure no.1 to this application.

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 Hon'ble Tribunal.

3. Limitation.

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

4. Facts of the case.

(a) That the Respondent no.3
(Sri Suryanath) made a reference to the Respondent
no.1 regarding termination of his service with
effect from 23.5.1981 from the post of Extra Depart-
mental Delivery Agent (EDDA), post office, Alambnagar,
Lucknow.

(ii) That the Respondent no.1 vide its notification No.L-40012/7/88-D-2(B) dated 7.1.1989 has referred the following dispute for adjudication to the Respondent no.2:-

"Whether the Sr. Supdt. of Post offices, Lucknow Division was justified in terminating the services of Shri Surya Nath, EDDA Alannagar Branch w.e.f. 23.5.85? If not, what relief the workman was entitled to?"

(iii) That the Respondent no.3 filed his written statement in support of his case - copy of which is being enclosed as Annexure no.2.

(iv) That the case of Respondent no.3 was that he worked on the post of Extra Departmental Delivery Agent with effect from 17.7.82 to 22.5.1985 and he was terminated from his post without any notice or payment of compensation.

(v) That the applicant filed his written statement contradicting the allegations of the respondent no.3 and stating clearly that the Respondent no.3 worked as a substitute in place of one Shri Ram Plat on his responsibility and his service conditions are

governed by the Extra Departmental Conduct Service Rules 1964 in as much as Shri Suryanath Respondent no.3 was never given appointment by the applicant and he continued to work as only substitute which never gave him any right to continue on the said post. A true copy of the written statement of applicant filed in the court of Industrial Tribunal cum-Labour Court, Kanpur is being filed herewith as Annexure no.3 to this application.

6(vi) That the case was listed for hearing before the Respondent no.2 on 11.1.90 and that day Shri RS Sonkar, Assistant Supdt of Post Offices, in the office of the Applicant along with Mail Overseer (West) Lucknow Shri SN Srivastava were present before the Respondent no.2 for pairvi of of the case ~~कानूनकान्तराल~~.

6(vii) That when the case was called for hearing Shri Sonkar requested time for calling his Counsel for cross examination of the Respondent no.3 and requested that the case may be taken after an hour.

Shri Sonkar left the Court of the Respondent no.2 in order to call his Counsel and when he returned he

he was informed that the Department will be communicated the order passed later on.

(viii) That nothing was heard from the office of the Respondent no.2 and on 15th March 1990 the award contained in Annexure no.1 was communicated to the office of the applicant, in which it is mentioned that the Respondent no.2 proceeded the case ex-parte against the applicant and gave award holding the termination of the services of the Respondent no.3 with effect from 23.5.1985 as illegal and also allowed full back wages to the Respondent no.3.

(ix) That the applicant was not allowed to adduce their evidence or an opportunity to cross examine the Respondent no.3 and the Respondent no.2 erredly in an arbitrary manner decided the case ex-parte in the absence of the Pairokar /Counsel of the management.

(x) That it was obligatory on the part of the Respondent no.2 to communicate the date of ex-parte hearing of the case and also to allow the applicant an opportunity to file its evidence by way of affidavit

in support of the written statement filed on behalf of the management. But the proceedings were not done in accordance with the principles of natural justice and only on the basis of the evidence of the workman i.e. Respondent no.3, the case was decided ex-parte.

(xi) That the Respondent no.2 did not consider the rules¹ applicable on the engagement of the Respondent no.3.

(xii) That the Respondent no.2 also did not consider the status of the Respondent no.3 who was only a substitute working on the responsibility of one Shri Ram Plat, a regular EDDA, Alammagar Post office, Lucknow.

(xiii) That the Respondent no.2 also did not consider the fact that the Respondent no.3 has no right on the post and even if he worked for more than 240 days, he has not right to continue on the said post being a substitute only.

(xiv) That the Respondent no.3 was never given any appointment by the applicant or his subordinate

as
and he was working only a ~~substitute~~ substitute
on the recommendation of the regular EDDA.

(xv) That the Respondent no.3 worked on the risk and responsibility of Shri Ram Plat, a regular EDDA on the following period :-

| <u>Sl. No.</u> | <u>Period</u> | <u>worked as substitute.</u> |
|----------------|--------------------------|------------------------------|
| 1. | from 16.7.82 to 30.10.82 | " |
| 2. | from 10.11.82 to 10.5.83 | " |
| 3. | from 1.6.83 to 31.1.84 | " |
| 4. | from 13.2.84 to 31.5.84 | " |
| 5. | from 9.10.84 to 20.12.84 | " |
| 6. | from 22.12.84 to 30.4.85 | " |

Thereafter he worked from 1.5.85 to 23.5.85 as substitute on the responsibility of one Shri Triveni Prasad Yadav due to going on leave. It is pertinent to mention that in December 84 Shri Ram Plat was promoted on the post of Postman and Shri ~~XXX~~ Triveni Prasad Yadav who was surplus EDDA employee was given appointment as EDDA Alannagar Post Office.

(xvi) That the ~~appk~~ Respondent no.3 has no right being an outsider to the said post and he cannot claim any continuity of service on the said post on

which post Shri Triveni Prasad Yadav is working.

(xvii) That the Respondent no.3 was not a workman under the provisions of the Industrial Disputes Act and as such is not applicable to him, thus the Respondent no.2 has no jurisdiction to adjudicate the matter regarding termination of service of Respondent no.3.

(xiii) That in view of the facts stated above the action of passing impugned ex- parte order of Respondent no.2 is unjust, arbitrary, malafide and against law.

(xiv) That the proceedings of Industrial Disputes caused the applicant irreparable loss and the said proceedings again proceed as barred by the principle of resjudicata.

5. Grounds for relief with legal provisions.

(a) Because the Respondent no.2 proceeded the case ex-parte against the applicant and gave award holding the termination of the services of the Respondent no.3 with effect from 23.5.1985 as illegal and also allowed full back wages to the Respondent no.3 as such the the order passed by the Respondent no.2 (Annexure no.1) is illegal.

(b) Because the applicant was not allowed to adduce their evidence or an opportunity to cross examine the Respondent no.3 and the Respondent no.2 erredly in an arbitrary manner decided the case ex-parte in the absence of the Pairokar/Counsel of the management.

(c) Because the Respondent no.2 did not communicate the date of ex-parte hearing of the case to the applicant and did not allow the applicant an opportunity to file his evidence by way of affidavit in support of the written statement.

(d) Because the proceedings were not done in accordance with the principles of natural justice and only on the basis of the evidence of the workman ie. Respondent no.3, the case was decided ex-parte.

(e) Because the Respondent no.2 did not consider the rules applicable on the engagement of the Respondent no.3.

(f) Because the Respondent no.2 dis not consider the status of the respondent no.2 who was only a substitute working on the risk and responsibility of another employee.

(g) Because the Respondent no.2 also did not consider the fact that the Respondent no.3 has no right to continue on the said post even if he completed 240 days because he was working as a substitute on the risk and responsibility of another employee, and he was purely an outsider.

(h) Because the Respondent no.3 was never given any appointment by the applicant or his subordinate.

(i) Because the Respondent no.3 has no right being an outsider to the said post and he cannot claim any continuity of service on the said post on which post Shri Triveni Prasad Yadav is working.

(j) Because the Respondent no.3 was not a workman under the provisions of Industrial Disputes Act thus Respondent no.2 has no jurisdiction to adjudicate the matter regarding termination of service of Respondent no.3 as he was a substitute.

(k) Because consequent on passing the impugned order by the Respondent no.2 has caused irreparable loss and injury to the applicant.

6. Details of the remedies exhausted.

There is no remedy available to the applicant against the order passed by the

Ld. Respondent no.2(Annexure no.1) as such

the present application is being made before this Hon'ble Tribunal. The Hon'ble High Court has also no jurisdiction in services matter of Central Government employees, hence this application is being made before this Hon'ble Tribunal.

7. Matters 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 with this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application/petition or suit is pending before any of them.

8. Relief(s) sought.

That the order dated 23/1/1990 (Annexure no.1) passed by the Lt. Respondent no.2 in Industrial Dispute No.23/89 (Shri Suryanath-vs- Sr. Supdt of Post offices Lucknow Division, Lucknow) be quashed.

9. Interim order, if any prayed for.

Pending final disposal of this application, the applicant seeks the following interim relief :-

Order to allow
the application
Supdt of Post offices
Lucknow Division

It is humbly prayed that till final disposal of this application, the operation of the order dated 19.1.1990 passed by the Lt. Respondent No.2 (Annexure no.1) in I.D. No. 23/89 (Shri Suryanath vs- Supdt of Post Offices, Lucknow Division, Lucknow) be ~~stay~~ remained stayed.

10. In the event of application being sent by registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so, he shall attach a self-addressed post card or inland letter, at which intimation regarding the date of hearing could be sent to him.

N.A.

11. Particulars of Bank Draft/Postal order filed in respect of the application fee.

Postal order No. 802.414996 Dt 7.9.96
issued by High Court Lucknow Branch
Post Office.

12. List of enclosures.

1. True copy of order dated 19.1.1990 (Annexure-no.1)
2. True copy of written statement in support of claim of Respondent no.3 (Annexure no.2)
3. True copy of written statement filed by the Applicant before the Industrial Tribunal (Annexure no.3).

For Govt of India
T.S. / 17.7.96

-13-

Verification.

I, S. N. Sarkeria

aged about 57 years, son of Shri Late Sh. Jagdish PD
at present posted as Sr. Supdt of Post Offices,
Lucknow Division, Lucknow do hereby verify that the
contents of para 1 to are true to my
personal knowledge, and paras to are believed
to be true on the basis of records and information
gathered as well as on legal advice and that I have
not suppressed any material fact.

✓ *D. K. Sarkeria*
Signature of the applicant
Senior Supdt. of Post Office,
Lucknow Division-226002

Lucknow,

Dated: *10th April* 1990.

*Through
Chand*
(R/K Chandharia)
Address

ANNEXURE No.1

Before Shri Arjan Dev Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court, Pandu Nagar, Kanpur.

Industrial Dispute No.23 of 1989

In the matter of dispute between -

Shri Surya Nath
c/o. Mazdoor Sabha
Husain Ganj Bazar
Lucknow.

And

Sr. Supdt of Post offices
Lucknow Divisions
Lucknow.

Award:

The Central Govt Ministry of Labour, vide its notification No.L-40012/7/88-D-2(B) dt. 7.1.89, has referred the following dispute for adjudication to this Tribunal.

Whether the Sr. Supdt. of Post offices, Lucknow Division was justified in terminating the services of Shri Surya Nath, EDDA, Alamanagar Branch wef 23.5.85? If not, what relief the workman was entitled to?

2. The workman's case in brief is that he had worked under the Sr. Supdt. of Post offices, Lucknow Division from 17.5.82 to 22.5.82. Moreover his services were terminated without notices, or notice pay retrenchment compensation. Thus the management violated the provisions of Sec.25F & 25C I.D. Act.

3. Written statement was filed on behalf of the management but on 11.1.90 the case was ordered to proceed ex parte against the management, the workman tendered in evidence his affidavit corroborating his case.

4. The provisions of section 25F having not been complied with by the management, to order terminating his services wef 23.5.81 is held as illegal.

5. Consequently, the workman is held entitled to reinstatement with full back wages. The reference is answered accordingly.

Sd/- Adjan Dey
Presiding Officer,

True copy

Let six copies of this award be sent to the ministry for its publication.

Sd/- Arjan Dey.

Attested:

Sd/- R.K. Srivastava
Personal Assistant
Central Govt Trikamak Industrial Tribunal
Kanpur.

Senior Supdt. of Post Office
Lucknow Division-226003

पांचनीय पीठासीन विधिकारी परिषद्य,
केन्द्रीय सरकार वांधोगिक विधिकरण,
कानपुर ।

Annexure No. 2

A25

वांधोगिक विवाद संख्या 23/1989

अधिक पदा की बोर से विवाद में लिखित वक्तव्यः-

1- यहाँ के प्राथीं शूर्यनाथ पुत्र भी दुलभराम पोस्ट एण्ड टेलिग्राफ विपाग में सीनियर सुपरिनेंटेन्ट बाफ पोस्ट बाफिस, लखनऊ दिवानन, लखनऊ के अन्तर्गत 17 जुलाई 1982 से कार्य बारम्ब दिया जाया जार लातार 22 मई 1985 तक कार्यीत था।

यहकि उपरोक्त सेवायोजकों ने प्राथीं को बनुचित एवं व्यवधानिक रूप से बोर कोई नोटिस, नोटिस पे या इटनी का कोई मुजाहिद बादि दिये ही 23 मई 1985 से कार्य से बंचित कर दिया।

यहकि सेवायोजकों ने प्राथीं से कनिष्ठ अनेक अधिकारों को काम पर बनाये रखा किन्तु प्राथीं को कार्य से बंचित कर दिया।

यहकि प्राथीं ने सेवायोजकों के प्रतिष्ठान में 16 जुलाई 1982 से 22 मई 1985 तक 240 दिनों से बहुत विधिक काल तक कार्य दिया, जो कि जोधोगिक विवाद कानून की पारा 25 एक एवं नियमावली 76, 77 एवं 78 द्वारा जो नियम निर्धारित हैं, उसके विपरीत आचरण करके प्राथीं को बनुचित एवं व्यवधानिक रूप से कार्य से बंचित किया है।

No. com. 5-

यहकि सेवायोजकों द्वारा कार्य से बंचित किये जाने के बाद से प्राथीं बेरोजगार है जार बेकारो के कारण परिवार सहित भूखों पर रहा है। हालाँकि प्राथीं ने इधर उधर बनेक स्थानों पर काम पाने का प्रयास किया किन्तु उसे कहीं काम नहीं मिला।

लूपसः--2

-2-

यहाँ प्राथीं अपनी सेवा में बहाली के मामले में पूरी दिलचस्पी रखता है और नोकरा करना चाहता है।

A26

प्राथीना

क्ष: प्राथीं माननीय पीठासीन अधिकारी केन्द्रीय सरकार और्योगिक अधिकरण कानपुर से बहुत ही विनम्रतापूर्वक याचना करता है कि प्राथीं को अधिष्ठित रूप से बेरोज़गारी की विवाद के सम्बूर्ण बेतन एवं अन्य लाप उक्ति नोकरी में बहाल कराने की कृपा की जाय तथा विवाद में सेवायोजकों से प्राथीं को परिव्यय (कास्ट) मी दिलाया जाय।

यहाँ प्राथीं माननीय पीठासीन अधिकारी और्योगिक अधिकरण, कानपुर यदि अन्य कोई लाप कानून के मुसार दिया जाना उचित समझता है उसे भी दिलाने की कृपा करें।

प्राथीं

दिनांक-

(सूर्यनाथ)

धोषणा

प्राथीं यह गम्भीरतापूर्वक धोषित करता है कि इस लिखित वकाल्य में लिखित तथ्य प्राथीं के ज्ञान, विवास एवं सूचना के बनुसार सत्य हैं।

प्राथीं

(सूर्यनाथ)

Dr. K. S. S.

प्रधार अमृत अधिकारी अधिकारी
Senior Supdt. of Post Office
Lucknow Division-226001

17/e

A27

माननीय पीठासीन अधिकारी महोस्य,
केन्द्रीय सरकार औषोंगिक अधिकरण,
कानपुर ।

आंषोंगिक विवाद सं०- 23/1989

शपथ-पत्र

शपथी सूर्यनाथ पुत्र श्री द्वृत्तम राम बायु 28 वर्ष निवासी-
आलमनगर, हरिजन बस्ती, 355/187, लखनऊ शपथपूर्वक निम्न निवेदन
कर रहा है ।

यहाँकि शपथपत्र के साथ संलग्न लिखित वक्ताव्य में बो तथ्य
लिखे गये हैं वह शपथी के ज्ञान, विश्वास एवं सूचना के बनुसार सत्य हैं ।

शपथी

दिनांक-

(सूर्यनाथ)

प्रोष्टाणा

शपथी यह गम्भीरतापूर्वक पोषित करता है कि इस शपथपत्र में
लिखित तथ्य शपथी के ज्ञान, विश्वास एवं सूचना के बनुसार सत्य हैं ।

शपथी

(सूर्य नाथ)

BEFORE THE LABOUR COURT CUM INDUSTRIAL TRIBUNAL

CENTRAL GOVERNMENT, U P CAMP AT LUCKNOW

Industrial Dispute No. 23 of 89

Suryanath

.. Applicant

-vs-

Sr. Supdt of Post offices,
Lucknow Division, Lucknow

.. Opp party, /Respondent

Written statement on behalf of Respondent
(Management).

That the Respondent beg to submit as under:-

1. That the contents of para 1 of the statement of the employee, are incorrect as stated, hence denied and in reply it is submitted that it is wrong to allege that the applicant worked continuously from July 17th 1982 till May 28 1985.
2. That the applicant Shri Suryanath was never appointed by the department but worked as a substitute on the security and responsibility of regular extra departmental agent Sri Ram Plat during the following period.
 - i) From 16.7.82 to 30.10.82
 - ii) From 10.11.82 to 10.5.83
 - iii) From 1.6.83 to 31.1.84
 - iv) From 13.2.84 to 31.5.84
 - v) from 9.10.84 20.12.84
 - vi) from 22.12.84 to 30.4.85

~~Do for a few~~ Senior Supdt. of Post Office
Lucknow Division-226044

Subsequently the applicant Shri Suryanath worked for the period from 1.5.85

to 23.5.85 in place of a substitute of Shri Triveni Prasad Yadav on his responsibility.

5. That it is pertinent to mention that as per extra departmental conduct service Rules 1964 whenever a regular extra departmental agent proceeds on leave he has an option to keep a substitute who will work on his responsibility and security. The substitute was never given appointment by the Department. In the case of the applicant Shri Suryanath he has never given any appointment after due selection and worked only as substitute.

6. That the contents of para 2 of the written statement of the employee are not correct hence denied, since Shri Suryanath was never appointed by the Department he cannot be treated as a de retrenched employee nor he is not entitled to get retrenchment compensation or notice of termination from the Department.

7. That the contents of para 3 of the written statement of employees are not admitted. No specific names of any employee who had been allowed to continue any such circumstances were mentioned and the department unable to give any proper reply in this regard. However, it is submitted that the post of regular extra

D. K. S. A.

प्रधान अधिकारी कार्यालय
संकाय अधिकारी कार्यालय
लखनऊ विभाग-226003

departmental agent are filled up in accordance with the instructions of the Department if possible from the retrenched employee if any available or after calling the names from the employment exchange. The applicant Sri Suryanath cannot be treated as a retrenched employee. He was never appointed by the Department nor he was retrenched due to paucity of posts.

8. That the contents of para 4 of the written statement of the employee are not correct as stated. The post offices are under the Ministry of Telecommunication and is a Govt. Department. The provisions of the Disputes Act 1947 do not apply in cases of extra departmental agents of the post offices. At the most the applicant can move an application before the Central Administrative Tribunal for his grievances.
9. That the contents of para 5 of the written statement of the employees are not admitted for want of knowledge.
10. That in reply to the contents of para 6 of the written statement of the employees it is submitted that at this moment the department is not in a position to provide any post or job to the applicant Shri Suryanath as there is already a heavy list of waiting candidates and retrenched employees to be absorbed against the regular vacancies.

Suryanath Whenever any vacancy will occur an advertisement will be made through employment exchange and in case the Senior Supdt. of Post Office Lucknow Division-226093

-4-

applicant Sri Surynath applies for the post, he will be considered.

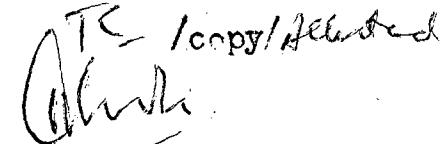
11. That it is also pertinent to mention that the cause of action arose to the employee as early as in the year 1985 and the present case is barred by time.

12. That the applicant Shri Suryanath was never appointed by the Department on any post and as such there is no contract of Master and servant between the applicant Suryanath and the Department/Management and as such the present dispute is liable to be dismissed on this score only. The applicant is not liable to get any relief claimed in the instant industrial disputes and the case is liable to be dismissed with special cost to the department/management.

Sd/- Sr. Supdt of Post offices
Lucknow Division, Lucknow
for and on behalf of management.

Lucknow,

Dated: 8.8.1989.

TC /copy/selected


RECORDED
Senior Supdt of Posts
Lucknow Division-22600

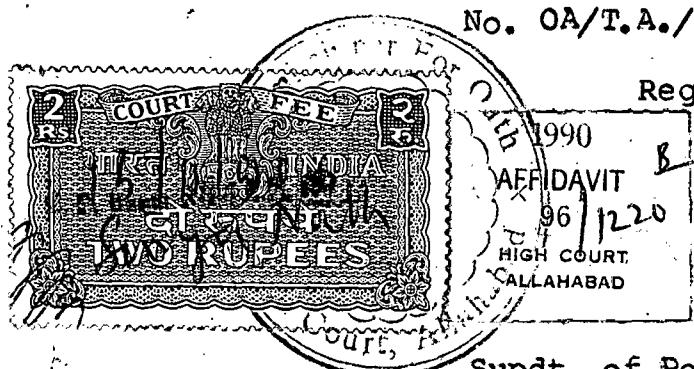
A32

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,
LUCKNOW.

No. OA/T.A./ 5125

Dated 21.9.90

Registration No. 306 / 1990 (L)



Supdt. of Post Offices, Lucknow.....Applicant.

Versus

Union of India and others Respondents.

COUNTER AFFIDAVIT

On behalf of Respondent No. 3

I, Surya Nath, aged about 29 years, son of Sri Dulam Ram, resident of 10/2 Old Labour Colony, Aishbagh, Lucknow, the deponent do hereby solemnly affirm and state on oath as under:-

1. That the deponent is the respondent no.3 himself and as such he is fully conversant with the facts.
2. That the contents of the application has been readout and explained to the deponent and he has understood the same.
3. That before giving parawise reply to the application, it is essential to give the brief facts for the proper appreciation of the case and



20/10/90

2.

adjudication of the controversy to the issues.

4. That the deponent has continuously worked as E.D.D.A. Alannagar, Lucknow Post Office under the control of the applicant w.e.f. 16.7.82 to 22.5.85.
5. That the services of the deponent were terminated w.e.f. 23.5.85 without any notice, pay in lieu of notice or any compensation for the retrenchment.
6. That the juniors to the deponent were not terminated and they are still in service as such the deponent was illegally discriminated.
7. That the deponent has continuously worked from 16.7.82 to 22.5.85 and as such has worked for more than 240 days but the services of the deponent were illegally terminated by the applicant against the provisions of Section 25-F of the Industrial Disputes Act and also against the rules 26, 27 and 28 of the concerned Niyamavali.
8. That the deponent has no other source of income and as such he became unemployed and he and his family sustained great economic hardships.
9. That the deponent preferred his case against his illegal termination of service before the Central Government Industrial Tribunal-cum-Labour Court, Kanpur.



22/7/85

A34

3.

10. That the applicant had violated the provisions of Section 25-F of the Industrial Disputes Act and had also illegally harassed the deponent who is a poor man belonging to the weaker Section of the Society.

11. That the deponent proved his ~~x~~ case before the learned Labour Court/Tribunal, who was pleased enough to reinstate the deponent with full back wages vide Order dated 19.1.1990.

12. That the deponent submitted his joining report on 21.3.90 to the applicant and requested him to allow him to resume his duties but inspite of several reminders he has not been allowed to resume his duties till now. The copy of joining report dated 21.3.90 is filed herewith as Annexure A-I to this counter affidavit.

13. 8. That the contents of paras 1, 2 and 3 of the claim petition/application needs no reply.

14. That the facts stated in para 4(i) to (iv) of the application are not disputed.

15. That the contents of para 4(v) as stated are not correct except that the applicant has filed his written statement.

16. That the contents of of the first part of



22/6/90

A35

4.

psts 4(vi) are not disputed but the remaining part of the said para are specifically denied being incorrect and wrong.

17. That the contents of para 4(vii) of the application are not correct, hence, denied.

18. That the contents of para 4(viii) as stated are denied and it is stated that the copy of the award was duly sent to the applicant through post. It is further stated that the Hon'ble Tribunal has considered the entire record and evidence of the case and after careful consideration it was established that the deponent was illegally removed from his services, hence, the illegal order of his termination was quashed and the claim application was allowed with back wages.

19. That the contents of para 4(ix) & (x) are not correct, hence, denied. It is stated that since none was present on behalf of the applicant on 11.1.90 the Hon'ble Tribunal was pleased to order exparte proceedings against the applicant.

20. That the contents of para 4(xi to xix) are also incorrect and wrong, hence, denied and it is stated that the applicant has violated the provisions of Section 25-F and 25-G of the Industrial Disputes Act and it was established rightly that the deponent's termination w.e.f. 23.5.85 was quite illegal and wrong.



5/1/90

5.

21. That the award dated 19.1.90 which is under challenge before this Hon'ble Tribunal is quite just, proper and legal and is based on sound reasonings.

22. That the grounds stated in para 5 of the application are not tenable and have no legal force.

23. That the contents of paras 6 and 7 of the application need no reply.

24. That the contents of para 8 are denied and it is stated that the award dated 19.1.90 is quite just, legal and proper and the present application has no merits and it deserves to be dismissed with cost to the deponent.

25. That the contents of para 9 of the application are also denied and it is stated that the applicant is not entitled for any interim relief, and the deponent will sustain irreparable loss, if the order dated 19.1.90 is stayed.

26. That the contents of paras 10 to 12 of the application need no reply.

27. That it is also stated that the deponent has yet not been allowed to resume his duties and the



2/1/1990

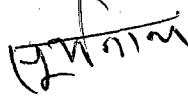
A 37

6.

paid
applicant has also not prayed the back wages to the
deponent as per the award dated 19.1.90 and as such
the applicant has wilfully failed to comply the provisions
of Section 17^B of the Industrial Disputes Act and as such
the application is not maintainable but the same is
liable to be dismissed even on this ground alone.

Lucknow, dated:

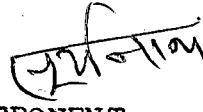
November 15, 1990.


DEPONENT

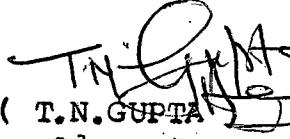
Verification

I, the abovenamed deponent do hereby
verify that the contents of paragraphs 1 to 9, 11 to 20
and 27 of this counter affidavit are true to my
own knowledge, those of paras are true
to my belief and those of paras 10, 21 to 26 are based
on legal advice, which are believed by me to be true.
No part of it is false and nothing material has been
concealed, so help me God.

Signed and verified today the 15th day of
November, 1990 in the Court Compound at
Lucknow.


DEPONENT

I identify the deponent who has signed before me.


(T.N.GUPTA
Advocate

P.T.O.

A38

अनेकजर ए-।

सेवा में,

श्रीमान प्रवर डाक अधीक्षक,
लखनऊ ।

विषय:- लेन्ट्रल लेबर कोर्ट कानपुर के फैसले के अनुसार
नौकरी बहाली ।

महोदय,

श्रीमान जी से निषेद्ध है कि प्रार्थी सूर्यनाथ
आत्मज श्री द्वूल्हम राम निवासी 355/187 आलमनगर,
लखनऊ-4 श्रीमान जी के समक्ष उचित आदेश हेतु उपस्थित है
और प्रार्थना है कि प्रार्थी को सेवाकार्य का आदेश दिया जाये ।

प्रार्थी,
ह० सूर्यनाथ
द्वारा श्री मोहन लाल कुरील,
355/187-190 आलमनगर,
लखनऊ-4 ।

दिनांक 21-3-90

सलंगन- फैसले की फोटो स्टेट कापी श्तीन पेज

प्राप्त 21/3
ह० अपहित
मुहर
ब्रांच सुपोर्ट आफिसेज



21/3/1990

Central Administrative Tribunal
Circuit Bench, Lucknow

ब अदालत श्रीमान

महोदय

A39

Case No. 0. P. N 03 Surya Nath

प्रतिवादी [रेपान्डेट] ✓

वकालतनामा

GA

Regd. No. 306-904

Subd. T. Subordinate Court

टिकट

बादी अपीलान्द

Union of India & Ors. Ff. 15-11-90

बनाम

प्रतिवादी (रेपान्डेट)

नं० मुकदमा

सन्

पेशी को ता०

१६ ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

B. H. M. S. K.

बकील

महोदय

एडवोकेट

अपना बकील निषुक्त करके प्रतिज्ञा (इकरार) कर इल मुकदमा में बकील महोदय स्वयं अधिकारी व जवाबदेशी व प्रश्नोत्तर करें या कोई दावें या हमारी ओर से डिगरी जारी करावें और हनामा व इकबालदावा तथा अपील निगरानी हरने हस्ताक्षरते दाखिल करें और तसदीक करें या मुझा करें या हमारी या विष्क्षी (फरीकासम्प्रा रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखते) युक्त करें बकील महोदय द्वारा की गई वह सब कारोकार हैं और होमी मैं वह यी स्वीकार करता हूँ कि हर पेशी पर स्वयं अपने किसी परोक्तार को भेजता रहूँगा अगर मुकदमा अदम परवी में क तरफ मेरे लियाक फैसला हो जाता है उसकी जिम्मेदारी मेरे बकील व नहीं होगी इसीलिए वह वकालत नामा लिख दिया प्रमाण रहे और यह पर काम आवे।

25-11-90
हस्ताक्षर

साक्षी (मवाह) साक्षी (गवाह)

दानांक 15 महीना 11 सन् १९९० ई०

वीक्ष्य

Accepted
T. H. Gupte

