

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

OA/TA/RA/CP/MA/PT 90 of 20 90

Bem Kumar Applicant(S)

U. O. S. 1 other 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

B. C. Bredaiah
13-6-12

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Date of Filing 27/3/90
Date of Receipt

Deputy Secy

Registration No. 90 of 1990 (9)

APPLICANT(S)

Prem Kumar

RESPONDENT(S)

U-03

Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent ?
2. a) Is the application in the prescribed form ?
b) Is the application in paper book form ?
c) Have six complete sets of the application been filed ?
3. a) Is the appeal in time ?
b) If not, by how many days it is beyond time?
c) Has sufficient case for not making the application in time, been filed?
4. Has the document of authorisation/ Vakalatnama been filed ?
5. Is the application accompanied by B.D./postal Order for Rs.50/-
6. Has the certified copy/copies of the order(s) against which the application is made been filed?
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?
c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application?
10. Is the matter raised in the application pending before any court of Law, or any other Bench of Tribunal?

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

NO

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
Nos. _____ pages Nos _____ ?
13. Have the file size envelopes bearing full addresses of the respondents been filed ?
14. Are the given address the registered address ?
15. Do the names of the parties stated in the copies tally with those indicated in the application ?
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?
17. Are the facts of the case mentioned in item no. 6 of the application ?
 - a) Concise ?
 - b) Under distinct heads ?
 - c) Numbered consecutively ?
 - d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for indicated with reasons ?
19. Whether all the remedies have been exhausted.

Yes

Yes

No

Yes

Yes

NA

Yes

Yes

Yes

dinesh/

Serial
number
of
order
and date

Brief Order, Mentioning Reference
if necessary

How complied
with and
date of
compliance

9.4.90

Hon'ble Mr. P.S. Habib Mohammad, A.M.

Hon'ble Mr. J.P. Sharma, J.M.

Heard the learned counsel for the
applicant.

Admit.

Issue notice to the respondents to
file reply within 4 weeks with service to
the applicant by 27.8.1990.

Post for orders on 27.8.1990.

Sd/-

J.M.

Sd/-

A.M.

rrm/

Notice given
on

10-4-90

OR
Notices were
issued on 10.4.90
Neither reply
nor any written
reply has
been returned
Submitted for
order

h
22

Dinesh

See
original order
on
main petition

01.09/90 (C)

(V)

D

94-90

Mr. P. S. Habibullah
Mr. J. P. Mann M

Admit

27-8-90 - Division Bench not available
Adj to 31/10/90

31.10.90

Due to Holiday case is
Adjourned to 18.12.90.

18.12.90

No sitting Adj to 26.2.91.

26.2.91 -

No sitting Adj to 8.4.91.

8.4.91

No sitting Adj to 13.5.91

13.5.91

No sitting Adj to 30.5.91

30.5.91

No sitting Adj to 22.7.91

22.7.91 Hon Mr. S. N. Prasad J M

Mr. Amit Bose learned counsel
for applicant appears and seeks one
week's time to file rejoinder
affidavit. Allowed. Shri B. D. Chadda
brief holder of learned counsel for
respondents Shri D. S. - Nandkumar
appears.

OR

NOR Filed
S. N

9/9

Let the case on 10-9-91
for hearing. Rejoinder affidavit be filed
within a week as requested.

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH : LUCKNOW

ORDER SHEET NO. _____

O.A./I.A. No. 90/90

OFFICE REPORT	DATE	ORDER
---------------	------	-------

24.9.92
D.R.

Respondent's side is present.
Rejoinder already has been
filed. List for final hearing
on 19-10-92 before the Hon.
Bench.

24.12.92

Case is
S.F.H.

16/10/92

Date
19.10.12

Honble Mr K. Obayng A.M.
Honble Mr S.N. Prasad J.M.

On the request of
learned counsel for the applicant,
the case is adjourned to
16.12.92.

J.M.

A.M.

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW.

O.A. No. 90 of 1990

Prem Kumar

Applicant

versus

Union of India & others.

Respondents.

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

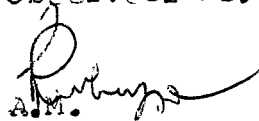
(Hon. Mr. Justice U.C.Srivastava,V.C.)

After reference of the applicant on the ground that he has not completed 240 days, the applicant has approached this Tribunal praying relief against the refusal but also against his termination. He was initially appointed as casual labour in the office of Regional Pay and Accounts Officer, National High Way, Ministry of Transport, on 28.4.1987 but the formal order were issued on 2.6.87. According to the applicant since then he has been continuously working except with breaks of one day on every Sunday. He was informed that his services are no longer required and he need not attend the office. According to the applicant he was a workman and the employer was an Industry. He has put in more than 240 days of service and could not be terminated without following the provisions of Industrial Disputes Act.

2. The respondents have opposed the application pleading that the applicant was on daily wages. he was appointed for a period until a regular clerk duly selected by the Staff Selection Commission joined. When SriMunner a duly selected candidate from S.S.C.was appointed, the work of casual labour no longer being available, the casual employment was not required. The respondents have refuted

the allegation that the department of Surface/^{Transport} is
~~xxx~~ an Industry.

3. The appointment letter indicates that the applicant was appointed as casual labour. It maybe that the work of Typist was taken from him, but the L.D.C. in Govt. of India is made after adopting certain procedure and as such the contention of the applicant that he has nothing to do with the appointment of Shri Munner cannot behold/a ground. Although the applicant was a casual labour and the work was taken from him, in case the work of typist was taken from him, there appears to be no reason why the applicant be not given reemployment while re-considering the case of the applicant for re-employment he will be given priority over new comers. Application is disposed of with the above observations. No order as to costs.


A.M.


V.C.

Shakeel/-

Lucknow: Dated 16.12.92.

Deputy R.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

CIRCUIT BENCH, LUCKNOW

FORM I.

ON 90/905

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNALS ACT 1985

Prem Kumar

...

APPLICANT

Versus

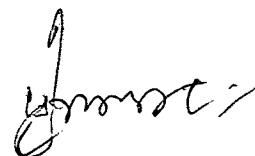
Union of India & others

..

Respondents

I N D E X

Sl.No.	Description of documents relied upon	Page No.
1.	Application <u>Annexure No.1</u>	1- 7
2.	True copy of letter dated 2.6.87	8-
3.	<u>Annexure No.2</u> True copy of representation dated 3.10.89	9-10
4.	<u>Annexure No.3</u> True copy of letter dated 29.1.90	11-12



Signature of Applicant

Noted for
9.4.90
ALP

Filed today
27/3/90

Sharma

(7)

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

CAT Case No. 90 of 1990 (4)

PREM KUMAR, aged about 27 years, son of
Shri Bas Deo Lal resident of House No. 12
Ganeshpuri, Shivaji Marg, Lucknow Applicant

Versus

1. The Union of India through the Secretary
Ministry of Transport, Government of India
New Delhi.
2. The Chief Controller of Accounts/Ministry of
Surface Transport, New Delhi.
3. Regional Pay and Accounts Officer(National High Ways)
Ministry of Transport(Department of Surface Transport)
B-730 Sector -C, Mahanagar, Lucknow
... Respondents

DETAILS OF APPLICATION:

1. Particulars of the orders : Instant application is
against which the application being filed by the
is made: applicant against his
termination of services
by the Regional Pay and Accounts
Officer(National High Ways) Ministry
of Transport, Department of Surface
Transport, B-730 Sector-C, Mahanagar,
Lucknow with effect from 29.9.89
without any order in writing.
 2. Jurisdiction of the: The applicant declares that the
Tribunal : subject matter of the order against
which he wants redress is within
the Jurisdiction of the Tribunal.
- Inome

(2)

3. Limitation:

The application 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:

(i) That the applicant was initially appointed as a Casual Labour in the office of the Regional Pay and Accounts Officer, National High Way, Ministry of Transport (Department of Surface Transport) with effect from 28th April 87. However, the formal orders of the applicant's appointment was issued on 2.6.87 by the Pay and Accounts Officer (National High Ways) Ministry of Transport, Lucknow. A true copy of the concerned order is annexed hereto as ANNEXURE No.1.

(ii) That ever since the aforesaid appointment the petitioner has continuously served on casual basis except for break of one day on every Sunday which break is liable to be ignored and it has to be deemed that the petitioner has been in continuous employment of the respondent No.3 hereto ever since 28.4.87.

(iii) That, however, suddenly with effect from 29.9.89, the applicant was orally informed by the respondent No.3 hereto that his services were no longer required and as such he should no longer attend the office.

5. Grounds for relief with legal provisions:

(a) Because the applicant having served as a casual labour for

ghazni

(4)

- (e) Because ~~xxxx~~ in view of the above and in view of the fact that the applicant has put in a continuous period of service of more than 240 days, his services could not be terminated without first complying with the provisions of Section 25 -F of the Industrial Dispute Act and since in the instant case, the said provisions have not been complied with, prior to termination of service of the applicant, ~~thas~~ much as the applicant has not been paid retrenchment compensation or one months pay in lieu of notice and as such the termination of service of the applicant is illegal and ab initio void.

6. Details of the Remedies exhausted:

I) That though the deponent does not have any statutory remedy available to him against the illegal termination of his service under any service rules applicable to him, but nevertheless he submitted a representation dated 3.10.89 addressed to the Deputy Controller of Accounts, Ministry of Surface Transport New Delhi complaining the illegal termination of his service, which is yet pending. A true copy of the concerned representation is annexed hereto as ANNEXURE D.2.

(II) That not only the above, the applicant also submitted an application dated 9.1.90 addressed to the Assistant Labour Commissioner (Central) Lucknow raising the

Sharma

(5)

an Industrial Dispute under section 2(A) of the Industrial Disputes Act with regard to the termination of his service, but by means of a letter dated 29.1.90, the Assistant Labour Commissioner (Central) Lucknow, informed the applicant that the Department of Surface Transport is not covered by the Industrial Dispute Act and as such, he, should approach the Central Administrative Tribunal for redressal of his grievances. A true copy of the letter dated 29.1.90 is Annexed hereto as ANNEXURE NO. 3.

7. Matters not previously : That as already pointed out
filed or pending with any other : herein above, the applicant
Court. : had raised an Industrial
: Dispute with regard to

termination of his service
by means of his application dated 9.1.90 before
the Assistant Labour Commissioner (Central) Lucknow
which has, however, been rejected by letter dated
29.1.90 issued by the Assistant Labour Commissioner
(Central) Lucknow which has already been
annexed as Annexure No. 3.

8. Reliefs Sought: (i) An order directing the
respondents to allow
the applicant to continue in service after
declaring their action of terminating his service
with effect from 29.9.89 to be illegal and void
abinitio.
(ii) An order directing the respondents hereto to pay
pay to the applicant his salary and allowances
as and when the same falls due together with

Y. H. G. 1

(6)

the arrears of the same with effect from
29.9.1989.

- iii) Any other relief deemed fit and proper
in the circumstances of the case including
an order awarding costs of this application
in favour of the applicant and against the
respondents.

9. INTERIM ORDER IF ANY PRAYED FOR:

Pending final decision on the application, the
applicant prays that the Honble Court may be
pleased to direct the respondents to allow the
applicant to continue in service and pay him
his salary and allowances as and when the
same falls due.

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
INFORMATION REGARDING THE DATE OF HEARING COULD
BE SENT TO THEM.

NOT APPLICABLE

11. Particulars of Bank Draft/Postal Order
Filed in respect of the application fee:
Postal Order No. 02409882 dated 20.3.90
for Rs. 5000 only

ghon

12. LIST OF ENCLOSURES : 1 True copy of letter dated 2.6.87
2. True copy of representation dated 3.10.89
3. True copy of letter dated 29.1.90
4. Postal Order for Rs. 50/-

Signature of Applicant

[Handwritten Signature]

VERIFICATION

I, Prem Kumar, son of Shri Bas Doo, resident of House No. 12, Banesh Puri, Shivaji Marg, Lucknow, the deponent, do hereby verify that the contents of paragraphs 1 to 4 of this application are true to my personal knowledge, and paragraphs 5 & 6 are believed to be true on legal advice and that I have not suppressed any material fact.

[Handwritten Signature]

Dated: 22nd February, 1990
Place: Lucknow

[Handwritten Signature]
Signature of applicant

Through

[Handwritten Signature]
(AMIT BOST)
Advocate

Counsel for the Applicant

ब अदालत श्रीमान

Central Ad. Tribunal ALZ Ad. Ad. Bench Luck

महोदय

[वादी] अपीलान्त

प्रतिवादी [रेस्पान्डेन्ट]

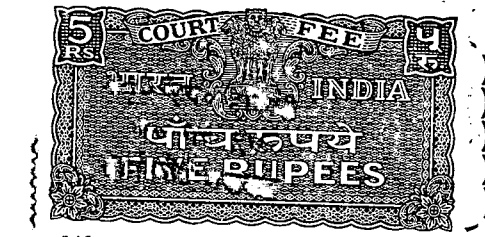
Applicant

श्री. Pram Kumar

का वकालतनामा

O.A.

8/1990



वादी (अपीलान्त)

Pram Kumar

versus of Guleria

बनाम

प्रतिवादी (रेस्पान्डेन्ट)

मुकदमा नं०

सन् 1990 पेशी को ता० 22.3.1990 ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

Anita Bose Ad.

वकील

महोदय

32/33 Gandhi Nagar (Chhitepur Rajwara)

एडवोकेट

Lucknow

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 पैरवी 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 रहूँगा 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 पाम आवे।

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

22

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दिनांक

महीना

सन् 1990 ई०

Accepted

Anita Bose

8/2/2010

BEFORE THE ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW.

C.A.T. Case No.

Of 1990

Prem Kumar

...

Applicant

Versus

Union of India & Others

...

Respondents

ANNEXURE NO. 1

NO. RPAO/NH/L/Gr.D/

Dated

OFFICE ORDER

Shri Prem Kumar resident of House No. 12 , Ganeshpuri ,
Shivaji Marg, Lucknow has been engaged as casual labour in
this office w.e.f. 28.4.87. He will be entitled daily wages
Rs.15/-per day as admissible to daily rated casual labour in
the Govt, of India office at Lucknow from time to time.

Sd/xxx

(S.M. SINGH)

PAY & ACCOUNTS OFFICER (NH)

NO. RPAO/NH/L/Gr.D/158-89

Dated 2.6.87

Copy to Shri Prem Kumar Casual Labour O/O The R.P.A.O (NH),
Lucknow.

2. Copy forwarded to the Chief Controller of Accounts,
Ministry of Surface Transport, New Delhi for his kind
information. The appointment has been made on the basis of
sanction accorded vide your Letter no. NH dated 23.7.86
He is graduate and is registered with employment exchange
lucknow bearing his registration no. C/10790/87.

Sd/xxx (S.M. Shingh)

PAY & ACCOUNTS OFFICER (NH)

Pay & Accounts Officer

R.P. & A.O. (NH)

Ministry of Transport

Lucknow.

T.C.

Print Date
Recd.

Shom

BEFORE THE ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW.

C.A.T. Case No. 90 of 1990 (2)

Prem Kumar

...

Applicant

Versus

Union Of India & Others ...

Respondents

ANNEXURE NO. 2

To,

The Deputy Controller of Accounts,
Ministry of Surface Transport,
I.D.A. Building, Jamnagar House,
New Delhi-110011

Subject. Regarding oral termination of the Services
of the undersigned applicant by Pay & Accounts
Officer (NH), Ministry of Surface Transport, 3-730,
Sector (C) Mahanagar, Lucknow.

Sir,

The undersigned applicant namely Prem Kumar R/o
House NO.12, Ganesh Puri, Shivaji Marg, Lucknow was engaged as
Casual Labour in the office of Pay & Accounts Officer (NH)
Ministry of Surface Transport, Lucknow with effect from 28/4/87
since then the applicant has been working as casual labour
and had been discharging his duties to the best Satisfaction
of his officers.

In this connection the applicant invites your kind
attention to the letter dated 12.1.89 written by Pay &
Accounts Officer (NH) Lucknow and addressed to you in which
recommendation were made for continuation for the applicants
services, But to the Utter Surprise of the applicant, his
Services has been terminated orally by the Pay & Accounts
Officer (NH), Lucknow on 29/9/89 without giving the applicant
any prior notice. The applicant has worked on the said post for

T.e.

Dr. B. S. Singh
Dr. B. S. Singh

Sham

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not less than 786 (seven Hundred & Eight Six) days and as such is entitled to be regularised.

I request your goodself that this letter may kindly be considered as representation against the oral order for termination of the applicant passed by Pay & Accounts Officer (NH) Lucknow and in view of the facts mentioned in foregoing paragraphs the Pay & Accounts Officer (NH) Lucknow May be directed to reverse the oral termination order and reinstak the applicant and also to regularising the Services of the applicant.

Dated. 03 October, 1989
Lucknow.

Sd/xxx
(Prem Kumar)

S/O Shri Basdeo Lal
H.NO. 12, Ganesh Puri,
Shivaji Marg, Lucknow-19

Copy to: Pay & Accounts Officer (NH) , Ministry of
Surface Transport, B-730, Sector 10, Mahanagar,
Lucknow, 226006.

Sd/xxx
(Prem Kumar)

T. e.
Anit Bose
Bose

Shon

BEFORE THE ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH, LUCKNOW.

C.A.T. CASE NO.

OF 1990

Prem Kumar

...

Applicant

Versus

Union of India & Others ...

Respondents

ANNEXURE NO. 3

NO.LKO.8/88-ALC.

Dated 29th. Jan. 1990.

Shri Prem Kumar
S/O. Shri Basdeo Lal,
C/O. Shri Sanja-y Saxena
189, New Model House,
LUCKNOW- U.P.

Subject:- Application U/s 2A of the Industrial Disputes
Act, 1947 between DefPtt. of surface Transport,
Lucknow and Shri Prem Kumar over ~~Alleged~~
Alleged illegal termination from services.

Dear Sir,

With reference to your applications dated.
9th. January, 1990 on the above subject. I am enclosing
here with your application dt. 9.1.90.

In this connection, I am to inform you that this
establishment is not covered under Industrial Disputes Act,
1947, you are therefore, advised to approach the Central
Administrative Tribunal.

Encl: As above.

Yours faithfully,

Sd/xxx
(R.M.Chellani)

Asstt. Labour Commissioner (CD)

Lucknow.

T.C.

Shri Basdeo Lal

Shri Basdeo Lal

12

In the Hon'ble Central Administrative Tribunal.
Circuit Bench.
Lucknow

O A No. _____ 90 of 1990

Prem Kumar ----- Applicant

Vs

Union of India and Others----- Respondents

Counter Affidavit on behalf of Respondents.

I, S. M. Singh aged about 55 years S/o Shri Chhote Singh, resident of C-383 Sector-B, Mahanagar, Lucknow, hereinafter described as the deponent, do hereby solemnly affirm and state as under :-

1. That the deponent is holding the post of Respondent No. 3, Regional Pay & Accounts Officer (National Highways) Ministry of Surface Transport, B-730 Sector-C, Mahanagar, Lucknow and he has also been authorised to affirm this affidavit on behalf of Respondents Nos 1 & 2.

2. That the deponent has read and understood the contents of the claim application and he is well conversant with the facts of the case deposed hereinafter.

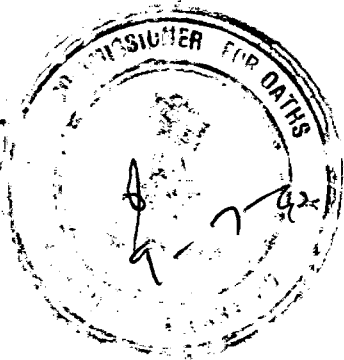
3. That before giving para wise replies it is necessary to state the following facts by way of brief back-

S.M. Singh

ground of the case :-

- (i) That the Office of the Regional Pay & Accounts Officer, (Respondent No. 3) is a small unit consisting of seven Accountants (U D Cs) and one Clerk (Lower Division Clerk). Out of these seven Accountants five posts of Accountants fell vacant during the period from December 1985 to March, 1987.
- (ii) That Shri S. Islam Clerk (Lower Division Clerk) was working as typist. But he had become eligible for appointment as Accountant as he had passed part I of Junior Accounts Officer's Examination held in 1986 and the result whereof was declared in February 1987.
- (iii) That, since at that time five post of Accountants (U D Cs) were lying vacant Shri S. Islam was allowed to work as Accountant (U D Cs) on purely ad-hoc basis. Accordingly, the typing work which had earlier been done by Shri S. Islam was left unattended.
- That under the above circumstances Shri Prem Kumar was engaged as casual labour on daily wages to do the typing work in the office w. e. f. 28. 4. 87.
- (v) That in the meantime on 15. 3. 88 Shri S. Islam was promoted to the post of Accountant (U D C) causing thereby a regular vacancy of a clerk (Lower Division Clerk).
- S.M. Singh

- (vi) That necessary approval for engagement of the applicant as casual labour for type-work on daily wages was obtained from time to time for the period until a regular clerk duly selected by Staff Selection Commission Allahabad Joined this Office.
- (vii) That Shri Munner was duly selected by the Staff Selection Commission Allahabad for appointment as a regular Lower Division Clerk and so he was appointed on the post. He joined this office as Lower Division Clerk in September 1989.
- (viii) That after the above regular appointment of a Lower Division Clerk the services of the applicant Shri Prem Kumar were no longer required even as a Casual labour for type-work. Accordingly, he was not engaged as casual labour on daily wages after 29-9-89. It may be emphasised that there is only one post of a Lower Division Clerk in the Office, which has now been filled up by a regularly selected candidate and there is no other post of Lower Division Clerk in this office.
4. That in reply to the contents of para 1 of the application it is submitted that there is no question of terminating his services by an order as he himself stopped attending Office when the work on which he was engaged was ceased to exist on posting of a regularly selected clerk. The casual engagement auto-

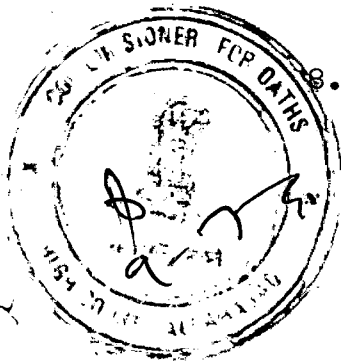


S.M. Singh

atically came to an end and no written order was required in this regard.

5. That the contents of paras 2 & 3 of the application need no reply.
6. That the contents of para 4(1) as stated are not admitted. In fact the applicant was only engaged as a casual labour on daily wages. He was not appointed on any post.
7. That the contents of para 4 (ii) as stated are not admitted and it is submitted that besides Sundays there were several breaks in his engagement as noted below:-

8-8-87, 29-8-87, 22-10-87, 25-12-87, 4-3-88
 1-4-88, 25-7-88, 30-7-88 20-10-88 9-11-88
 22-3-89 27-5-89 and 23-9-89



That in reply to the contents of para 4 (iii) it is submitted that since Shri Munnar duly selected by the Staff Selection Commission for the regular appointment as a Lower Division Clerk joined this office, the services of the applicant, casual labour were not required after 29-9-89.

9. That with regard to the grounds taken by the applicant in para 5 of the application it is submitted :-

- (i) That, so far as Ground (a) is concerned, the applicant being only a casual labour

S. M. Singh

on daily wages had no right to continue in service specially when a regular L.D.C. duly selected by the Staff Service Commission was appointed.

Accordingly, there is no contravention of any legal right of the petitioner. In view of this position, there is nothing arbitrary in the action of the Respondents, and there is no violation whatsoever, of Articles 14 & 16 or any other provision of the Constitution of India.

(ii) That in respect of Ground (b) it is stated that the work which had been done earlier by the Casual Labour Shri Prem Kumar, the applicant, is now being done by the regular L.D.C., Shri Munnar, and as such the work for a casual labour was not available and the casual engagement was no more required. There is nothing illegal and arbitrary in not engaging the applicant as the casual labour any longer.

(iii) That the contentions raised in ground (c) & (d) are not sustainable in law and the office of Respondent No. 3 or the Department of Surface Transport is not 'Industry' in any view of the matter within the definition of "Industry" under the Industrial Disputes Act. The construction of roads, throughout the country is done either by State Government or by the Director General, Border Roads. This Department only works as liaison between the Government of India and the State Government. Moreover, the office of Regional Pay & Accounts



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Officer (Respondent No. 3) is a Unit of Accounting Organisation which only keeps Accounts of the Department and works under a separate organisation, namely - Controller General of Civil Accounts, Ministry of Finance, Govt. of India. This establishment is not 'Industry' and it is not covered under the Industrial Disputes Act. It may be added that the Asstt. Labour Commissioner (C), Lucknow vide his letter dated 19-1-90 which has been filed as Annexure No.3 alongwith the application has clearly held that this "establishment" is not covered under the Industrial Disputes Act, 1947.

- (iv) That the contentions raised in Ground (e) are also emphatically denied. It has already been explained above that the "establishment" of the respondents is not at all 'Industry' within the definition given in the Industrial Disputes Act, 1947 and as such there is no question of applying section 25-F or any other provision of the Industrial Disputes Act to the present case. Accordingly there is no question of pay one month's pay in lieu of notice or retrenchment compensation. In fact, there was no termination of service. The casual labour was no longer required after the regularly appointed L.D.C. had taken over the work which had earlier been done by the casual labour. Thus, the action of the respondents in not engaging the casual labour any longer is perfectly



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legal, just and proper and there is nothing illegal and void ab-initio in the action taken by the Respondents.

- (10) That in reply to contents of para 6(i) of the claim application, it is submitted that the representation dated 3-10-89, submitted by the applicant to the Deputy Controller of Accounts, Ministry of Surface Transport, New Delhi has been duly considered and rejected by Respondent No.2, The Chief Controller of Accounts, Ministry of Surface Transport, New Delhi as intimated to the deponent vide his office letter No.CCA/SPT/Admn/9/90-91/336 dated 31-5-90, with the instructions to inform the applicant. Accordingly Shri Prem Kumar, Applicant, has been informed vide Respondent No-3's letter No.RPAO/NH/L/253 dated 8-6-90. A true copy of the aforesaid letter is filed as Annexure-C-I to this Counter Affidavit.

11. That the contents of para 6(ii) of the application need no reply.

12. That the contents of para 7 of the application need no reply.

13. That in reply to the contents of para 8 of the application it is submitted that in view of the position stated above in this Counter Affidavit the applicant is not entitled to any relief sought in the present claim application.

14. That with regard to para 9 of the application it

SM Singh

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is submitted that there is no prima-facie case in favour of the applicant. In view of the position stated above in the counter affidavit, the applicant has no right to continue in service. Accordingly, the applicant is not entitled to any relief and as such there is no question of giving any interim relief and passing an interim order for that purpose. Accordingly prayer for interim order is liable to be rejected.

15. That the contents of paras 10 to 12 of the claim application need no reply.
16. That the deponent has been advised to state that the grounds taken by the petitioner are not sustainable in law and in view of the position stated in this Counter Affidavit the applicant is not entitled to any relief sought in the present claim application which is devoid of any merit and is liable to be dismissed with costs.

Lucknow: ✓

Dated: 9th June, 1990.

S. M. Singh
Deponent

Verification

I, the above named deponent do hereby verify that the contents of paras 1 & 2 of this affidavit are true to my own knowledge, the ()

- 9 -

contents of para 3 to 15 are true to my knowledge derived from the official records and the contents of para 16 are believed by me to be true on the basis of legal advice. No part of this affidavit is false, and nothing material has been concealed. So help me God.

Lucknow

Dated: 9th July

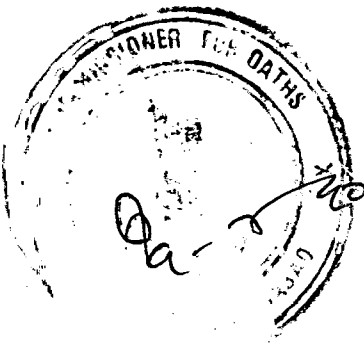
, 1990

S.M. Singh
Deponent.

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

S. S. Sarda
ADVOCATE.

Solemnly affirmed before me on 9-7-90 at 2-30 AM/PM
by the deponent S. M. Singh
who is identified by S. S. Sarda Advocate, High Court,
Lucknow.



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

A. P. Singh

JOINT COMMISSIONER

Joint Commissioner, Lucknow

A. P. Singh

Registered
Receipt No. 772
dt- 8/6/90

GOVERNMENT OF INDIA

भारत सरकार

Registered / A.D.

Tel. : 71943

दूरभाष : ७१६४३

Office of the Regional Pay & Accounts Officer (NH)

कार्यालय क्षेत्रीय वेतन एवं लेखाधिकारी (रा० मा०)

Ministry of Surface Transport

जल भूतल एवं परिवहन मंत्रालय

B-730, Sector-C, Mahanagar,
Lucknow.

B-730, Sector-C, Mahanagar,
Lucknow.

पत्रांक-आर०पी०ए०ओ०/एन०एच०/एल०

No. R.P.A.O./N.H./L 253

दिनांक

Dated 8-6-90

To

Shri Prem Kumar,
S/o Shri Basdeo Lal,
House NO-12, Ganesh Puri,
Shivaji Marg, Lucknow.

With reference to your representation dt 3-10-89, addressed to Deputy Controller of Accounts, Ministry of Surface Transport New Delhi, regarding oral termination of your services, I have to inform you that, as intimated to me vide Chief Controller of Accounts Ministry of Surface Transport New Delhi's letter NO-CCA/SFT/Admn/9/90-91/336 dt 31-5-90, your representation, after due consideration, has been rejected. A copy of the afore said letter dt 31-5-90 is also enclosed herewith.

Encl - 1 No.

S.M. Singh

S.M. Singh

8-6-90

(S.M. SINGH)



Regional Pay & Accounts Officer
Ministry of Surface Transport
National Highways, Lucknow

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SPEED POST

OFFICE OF THE CHIEF CONTROLLER OF ACCOUNTS
MINISTRY OF SURFACE TRANSPORT
I.D.A. BUILDING JAMNAGAR HOUSE NEW DELHI

No.CCA/SFT/Admn/9/90-91/ 336

Dated: 31.5.90

To

Shri S.M.Singh,
Pay & Accounts Officer(NH),
Lucknow.

Sub: Oral termination of services of Shri Prem Kumar
casual labourer on daily wages basis.

Sir,

I am to refer to representation of Shri Prem Kumar, daily wager of your office addressed to this office and copy endoresed to you on the above subject and to state that his representation has been considered at H.Qr.Office and you may inform him as under:-

P.A.O.(NH) letter dated 12.1.89 referred to in his representation has already been disposed of by coveying further sanction for his engagement as daily wager upto 28.2.89 or till a regular clerk is posted from S.S.C. whichever is earlier.

Regarding oral termination of his services it may be informed that he was engaged as a casual daily wager purely for a short term vacancy. As the Staff Selection Commission had provided a regular hand, his services were not required further more and he has no right to continue to work. There was no question of oral termination of his services and the action taken by P.A.O.(NH), Lucknow was quite, just legal and proper. As such his representation dated 3.10.89 has been rejected.

Yours faithfully,

Ajit Kumar

(AJIT KUMAR)
Pay & Accounts Officer(Admn)



S.M. Singh

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

Additional Bench, Allahabad

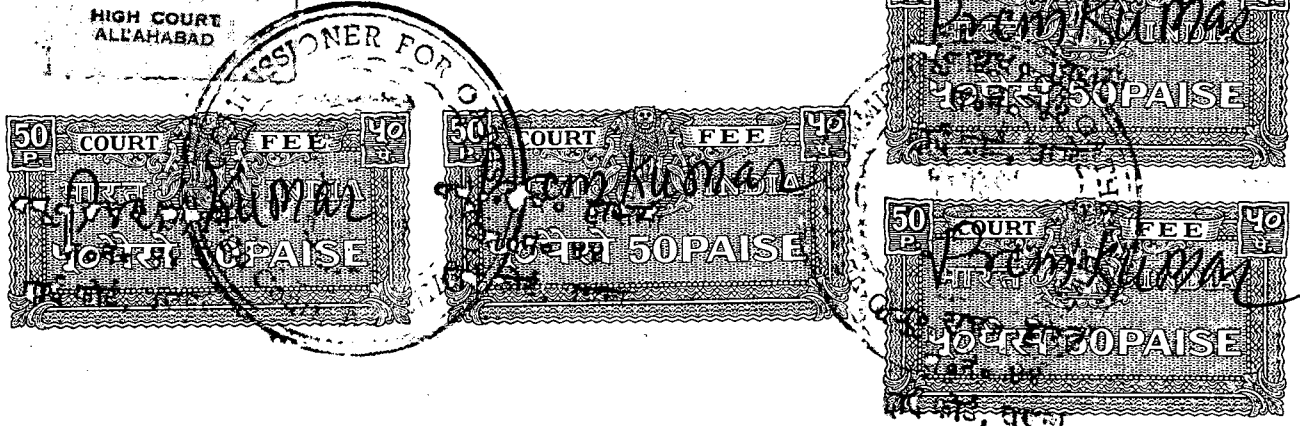
Circuit Bench Lucknow.

1992
AFFIDAVIT

8-12/91

HIGH COURT
ALLAHABAD

O.A.No. 90 /1990



PREM KUMAR

...

Applicant

Versus

Union of India & others ...

Respondents

REJOINDER AFFIDAVIT

I, Prem Kumar, aged about 24 years son of Shri Basudeo Lal, house No. 12 Ganeshpuri, Shivaji Nagar, Lucknow, the deponent do hereby make oath and state as under:

1. That the deponent is the applicant himself in the above mentioned application and as such he is fully conversant with the facts of the case as deposed to herein after.

2. That the applicant has read and understood the contents of the counter affidavit to be herein after called the 'counter' filed by Shri S.N. Singh Regional Pay and Accounts Officer, National High Ways, Ministry of Surface Transport, Lucknow and he states that he is fully competent to reply to the same parawise as under.

F. Today
27-7-92

Shri S.N. Singh



(2)

3. That the contents of paras 1, 2 and 3 of the counter need no comments.

4. That the contents of para 3(i), 3(ii), 3(iii), 3(iv), 3(v), 3(vi) and 3(vii) of the counter need no comments from the deponent.

5. That the contents of para 3(viii) of the counter are not admitted as stated and it is submitted that it is wrong on the part of the deponent of the counter to assert that it was on the joining of Shri Munner as Lower Division Clerk, that the services of the deponent were terminated. In fact the deponent was serving as a Typist and the appointment of Shri Munner could under no circumstances justify the termination of service of the applicant.

6. That the contents of para 4 of the counter are not admitted as stated in view of the averments made herein above.

7. That the contents of paragraph 5 of the counter need no comments.

8. That the contents of para 6 of the counter are not admitted as stated and those of para 4(i) of the application are reiterated.

9. With regard to That the contents of paragraph 7 of the counter



Shri Munner

(3)

it is submitted that the so called breaks in between the various periods of service of the deponent cannot be utilised by the respondents to deny the deponent the right of continuous employment as they are of less than 30 days duration and are in fact artificial breaks in nature.

10. That the contents of paragraph 8 of the counter are not admitted as stated in view of the averments made herein above.

11. That the contents of paragraph 9(i) and 9(ii) of the counter are denied in view of the averments made herein above.

12. That the contents of paragraph 9(iii) of the counter are not admitted as stated and it is stated that the Ministry of Surface Transport is covered by the definition of the term 'Industry' as contained in Section 2(j) of the Industrial Disputes Act as it is engaged in the construction of roads, throughout the country. Besides, the question whether the Ministry of Surface Transport was covered by the definition of the term 'Industry' or not was a mixed question of law and fact and it had to be determined on the basis of evidence led by the parties before the Labour Court and the said question could not have been decided by the Conciliation Officer as has been done in the instant case. Even otherwise, refusal of the Union Govt. to refer the dispute



Shamir Khan

(4)

regarding the termination of services of the applicant for adjudication on the ground that the Ministry of Surface Transport is not covered by the definition of the term 'Industry' amounts to entering into the merits of the said dispute which was not within the jurisdiction of the Regional Conciliation Officer.

13. That the contents of paragraph ~~xxxxxxx~~ ~~counter need no comments from the deponent~~ 9(iv) of the counter are denied in view of the averments made herein above.

14. That the contents of paragraph 10 of the counter need no comments from the deponent.

15. That the contents of paragraphs 11 & 12, of the counter need no comments from the deponent.

16. That the contents of paragraph 13 of the counter are denied and the contents of para 8 of the Application are reiterated.

17. That the contents of paragraph 14 of the counter are denied.

18. That the contents of para 15 of the counter need no reply from the deponent.

19. That the contents of paragraph ~~15~~ 16 of the counter are denied. The ~~xxxx~~ Application of the



for MC answer

(5)

deponent is liable to be allowed with costs in favour of the deponent.

Lucknow, dated
24 July 1992

Bhim Lal Singh
Deponent

VERIFICATION

I, the above named deponent do hereby verify that the contents of paragraphs 1 to 19 of this affidavit are true to the knowledge of the deponent. No part of this affidavit is false and nothing material has been concealed. So help me God.



Bhim Lal Singh
Deponent.

I identify the deponent who has signed before me.

Amit Bose
(AMIT BOSE) 24/7/92
Advocate

I have satisfied myself by examining the contents of the affidavit which has been read out and signed by the deponent that he is the person who has signed the affidavit and that he is the person who has been read out and signed by me. I have also satisfied myself by examining the contents of the affidavit which has been read out and signed by me. I have also satisfied myself by examining the contents of the affidavit which has been read out and signed by me.

C. P. MISRA
Advocate Oath Commissioner
Allahabad High Court.
Lucknow
No. 8-1367
Date 24-7-92