

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, .....BENCH

OA/TA/RA/CP/MA/PT 175/90 of 20.....

Hori Prakash Mishra

Applicant(S)

Versus

U.O.-I

Respondent(S)

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B.C. File Weeded and destroyed

Certified that the file is complete in all respects.

Signature of S.O.

Signature of Deal. Hand

18/5/90

CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

TAI

V.C.

Registration No. 195 of 1989

APPLICANT(S) H. P. Mahajan

RESPONDENT(S) C.C.S.

Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent ? JA
2. a) Is the application in the prescribed form ? JA  
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 ? JA  
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 ? JA
5. Is the application accompanied by B.D./Postal Order for Rs.50/- JA
6. Has the certified copy/copies of the order(s) against which the application is made been filed? JA
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ? JA  
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ? JA  
c) Are the documents referred to in (a) above neatly typed in double space ? JA
8. Has the index of documents been filed and paging done properly ? JA
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application? JA
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal? No

(A2)

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. \_\_\_\_\_ pagesNos \_\_\_\_\_ ?
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.

Y/A  
Y/A

Y/A

Y/A

Y/A

NA

Y/A

Y/A

Y/A

dinesh/

(P3)

O.A. NO.175 of 1990 (L)

18.5.1990

Hon'ble Mr. Justice K. Nath, V.C.

Hon'ble Mr. K.J. Raman, A.M.

Admit. Issue notice counter may be  
filed within 4 weeks, rejoinder within 2  
weeks thereafter. The prayer for interim  
relief is rejected.

List for final hearing on 31.7.1990.

Sd/-

A.M.

Sd/-

V.C.

rm/

25-6-90

Hon Mr. Justice K. Nath, V.C.

Hon Mr. K. Chayya A.M.

Mr M. Dubey for Applicant  
Dr. D. Chandra for respondents.

The case is already listed  
for final hearing on 31-7-90.  
Respondents may file counter  
within 2 weeks, to which the  
petitioner may file rejoinder  
within 2 weeks thereafter.

The respondents may file  
reply to the interim relief application  
within 2 weeks which may be  
taken up on 23-7-90.  
for orders.

Amr

Amr

or  
notice given  
on

22/5/90 to

All the

parties on that

date.

Signature

20/7/90

CM 370/90 (L) filed today

OR

He for the applicant  
has filed CM 370/90 (L)  
for interim relief.

Date is already fixed

Notices were issued  
on 21/7/90.

No unserved reply  
has been received.

S. P. O.

h  
29/7/90

23.7.90

Hon'ble Mr. Justice K. Nath V.C.

" " K. Chayya A.M.

Dr. Dinesh Chandra files C.A.  
The case is put up for orders on  
25.7.90.

(A.M.)

(V.C.)

OR

Neither reply on  
the main petition nor  
any reply on interim  
relief has been  
filed.

S. P. O.

h  
29/7/90

CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH

LUCKNOW

Original Application No. 175 of 1990 (L)

Date: 16-8-1990

Hari Prakash Mishra

... Applicant

Vs.

Union of India & others

... Opp. Parties

Hon'ble Mr. P. Srinivasan, AM

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

J U D G M E N T

(Delivered by Hon'ble Mr. P. Srinivasan)


The applicant was appointed as <sup>Extra</sup> Departmental Branch Postmaster (EDBPM), Lawani Kalan, District Unnao, by an order dated 1-11-1989 passed by the Superintendent of Post Offices (SPO), Kanpur (M), Division. But within about 6 months thereafter, the same SPO passed another order on 2/7-5-1990, terminating the services of the applicant under Rule 6 of the P & T EDA (C & S) Rules, 1964 with immediate effect. Aggrieved with this last mentioned order, the applicant has filed this application.

2. Shri M. Dubey, learned counsel for the applicant and Dr. Dinesh Chandra for the respondents have been heard. The respondents have also filed a reply resisting the application. Though allegations have been made in the application that respondent no. 3 named therein was interested in another person and had therefore manoeuvred the termination of the applicant's services, the said respondent no. 3 has not filed a separate reply, but respondent no. 2 who has filed reply on behalf of all the three respondents has sought

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to deny the allegations against respondent no. 3, particularly the allegation that respondent no. 3 had played a role in the impugned order terminating the applicant's services.

3. The facts of the case are as follows: after two unsuccessful attempts to fill up the post of EDBPM, Lawani Kalan, Unnao, an advertisement calling for applications was issued on 24-2-1989. Nine candidates, including the applicant applied in response thereto and "after making the necessary enquiry" (see para 4 of the respondents' reply) the applicant was appointed to the post by order dated 1-11-1989<sup>H</sup> which narrated, inter-alia that the appointment "shall be in the nature of a contract liable to be terminated by him or by the undersigned by notifying the other<sup>H</sup> in writing .....". The applicant states - and the respondents do not deny - that respondent no. 3 had inspected the applicant's cloth shop and had reported that the cloth lying there did not belong to the applicant and that the shop premises were not suitable to house the post office; that the Pradhan<sup>-s</sup> of the applicant's village and of the other villages served by the Lawani Kalan Branch Post Office wrote to the authorities that the report of respondent no. 3 was not right and that the applicant was the most suitable person for appointment as EDBPM while two others, viz. Rama Krishna Rathore and Raghunath Prasad were not suitable; whereupon another official Shri G.P. Dwivedi, was deputed to make enquiry and he reported in the applicant's favour resulting in the appointment of the applicant on 1-11-1989; that thereafter Ram Krishan Rathore had made allegations against the applicant which

P.D. 

AG  
were inquired into by Shri K.K. Nigam and found to be untrue. In short, it is admitted by the respondents that the applicant's initial appointment was made after following a proper process of selection and after making proper inquiry into the allegation by Ram Krishna Rathore that the applicant was not suitable for the post <sup>which</sup> had been found to be untrue.

4. In the above circumstances why were the applicant's services terminated? The respondents say that the selection and appointment which was made by the SPO was subject to review by the Director of Postal Services (DPS). On such a review, the DPS, Kanpur, found that while selecting the applicant, "the appointing authority had ignored the candidate (sic) of more suitable candidates for the said post". Therefore the services of the applicant were terminated. Rule 6 of the Extra Departmental Agents (Conduct & Service) Rules, 1964, (the Rules for short) specifically provided that the service of an employee who had not rendered more than three years' continuous service was liable to termination by the appointing authority at any time without notice. The letter appointing the applicant had also stated that his appointment was in the nature of a contract which could be terminated by either side without assigning any reason. Learned counsel for the respondents therefore submitted that it was in exercise of the power vested in him by Rule 6 of the Rules, that the SPO terminated the services of the applicant who had not put in continuous service of three years by then.

5. Normally we would have no hesitation in upholding an order passed in pursuance of Rule 6 of the

P. L. V.

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Rules purporting to terminate the services of an Extra Departmental Agent who had not put in 3 years of continuous service. But in this case when the appointment was made after a proper selection to a vacant post and <sup>after</sup> <sup>M</sup> complaint, against the suitability of the applicant were specifically enquired into and found to be untrue, it is somewhat strange that the DPS should come to the conclusion that more suitable candidates had been ignored while selecting the applicant; it is all the more so when the respondents themselves say that on two earlier occasions suitable candidates were not forthcoming to fill the post. It is admitted that the applicant's services were not terminated due to complaints received against him.

Though the power to terminate the services of an EDA without assigning reasons is given to the appointing authority where the employee has not put in three years of continuous service, that power is meant to be exercised when the appointee is found to be unsuitable for continuance in service or for any other administrative reason. In this case, allegations against the applicant's suitability were enquired into and found to be untrue. It was admitted by learned counsel for the respondents that the DPS did not name any particular candidate or candidates who were more suitable and had been ignored; that being so, the question arises <sup>as to whether</sup> ~~what~~ for the conclusion was drawn by him on the basis of any evidence before him or was an arbitrary decision.

6. Having said so much, we must notice one more fact. The respondents say that Ram Krishan Rathore - one of the persons who applied for the post and were not selected when the applicant was selected

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and who complained unsuccessfully against the applicant's appointment - has been appointed in his (applicants) place and that he should have been impleaded as a respondent, but has not been so impleaded. <sup>H</sup> While Rathore's appointment in the background of the facts set out earlier itself raises more questions, <sup>H</sup> we would not like to decide the matter in his absence so as to affect his interest adversely. Moreover, the respondents point out that the applicant has a departmental remedy of review available to him under Rule 16 of the Rules. We feel that the applicant should first approach the reviewing authority before seeking remedy from this Tribunal. The Reviewing authority should <sup>H</sup> go into all the aspects of the matter, particularly, <sup>H</sup> those referred to above, give the applicant an opportunity of being heard and pass a speaking order. He will also hear Ram Krishan Rathore before disposing of the review application. The applicant will make his application for review within fifteen days from the date of receipt of this order. The reviewing authority will treat it as having been filed in time, consider the same as directed by us above and intimate his decision to the applicant within one month thereafter. If the decision goes against him, the applicant will be at liberty to approach this Tribunal.

7. The application is disposed of on the above terms leaving the parties to bear their own costs.

*Tomau*

MEMBER (J)

*Upa.*

*P. S. He*

MEMBER (A)

*16/8*

ES/

Central Administrative Tribunal  
Circuit Bench at Lucknow  
Date of Filing 10/5/90  
Date of Receipt by Law  
Deputy Registrar (I)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

ORIGINAL APPLICATION NO. 175 OF 1990

Hari Prakash Misra, son of Devi Ghulam  
Misra Extra Departmental <sup>Branch</sup> Post Master  
Lawani Kalan, Unnao r/o village and Post  
Lawani Kalan, Unnao .. Applicant

Versus

- Mr Secretary to Govt*
1. Union of India through ~~Post Master~~  
*Ministry of Communication, Department of Posts,  
General Uttar Pradesh  
Government of India, New Delhi*
  2. Superintendent of Post Offices,  
Kanpur (M) Division, Kanpur
  3. Sri B.L.Kureel Sub Divisional Inspector  
Post Office, Safipur Unnao

... Respondents

~~Under~~ Application under Section 19 of the Admin-  
istrative Tribunal Act 1985

I N D E X

<u>Sl.No.</u>	<u>Particulars</u>	<u>pages</u>
1.	Application	1 to 12
2.	Annexure-1 Copy of complaint dt. 8.9.89 made by Sri Durga Pd.Tiwari Pradhan	13 to 14
3.	Annexure-2 Copy of representation dt. 16.10.89 made by Pradhans	15
4.	Annexures 3 Copy of representation dt. 20.8.89	16
5.	Annexure-4 Copy of representation dated 15.2.89	17
6.	Annexure-5 Copy of appointment letter dated 1.11.89	18
7.	Annexure-6 Copy of statement given by applicant dt. 16.1.90	19

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Osw  
18/5/90

Mentioned in  
the court  
10/5.

~~FILE~~  
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.2.

8. Annexure-7 Copy of application dt. 20  
7.1.90
9. Annexure-8 Copy of compalitnt made 21  
by applicant dt. 20.1.90
10. Annexure-9 Copy of certificate dt. 22  
12.10.88 issued by  
Tahsildar
11. Annexure-10 Copy of termination order 23  
dt. 2.5.90

-----  
Lucknow: Dated

May 18, 1990

Signature of the Applicant

*Hanni*

For the use in Tribunals

Date of Filing

Regularisation No.

*[Signature]*  
Signature

for Regularisation

Dr. Adm. ...  
Circuit Bench  
Date of Filing 10/5/90  
Date of Receipt by  
Deputy Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH: LUCKNOW

ORIGINAL APPLICATION NO. 175 OF 1990 (L)

Hari Prakash Misra, son of Sri. Devi  
Gulam Misra, Extra Departmental Post-  
Master, Lawani Kalan district Unnao  
resident of Village and Post Lawania  
Kalan, district Unnao ..... Applicant

Versus

1. Union of India, through the Post-  
Master General, U.P.
2. Superintendent of Post Offices,  
Kanpur (M), Division Kanpur
3. Sri B.L. Kureel, Sub Divisional Inspector  
Post Offices, Safipur district Unnao  
..... Respondents

Details of Application

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

(a) Termination order dated 2.5.90 passed by  
Superintendent of Post Offices, Kanpur (M),  
Division, Kanpur contained in annexure-10.

2. Jurisdiction of the Tribunal

The applicant declares that subject matter of

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the order against which he wants to redressal is within the jurisdiction of the Tribunal.

3. Limitation

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

4. Fact of the case

1. That the opposite party no.2 invited applications for the post of Extra Departmental Branch Post Master on 24.2.1989 and last date of submissions of the application was indicated as 23.3.1989.

2. That the applicant alongwith two others were applied for the post in question. The two persons were S/Sri Raghunath Bajapai and Ram Krishan Rathore.

3. That after the applications being submitted with the opposite party no.2 an enquiry with regard to the eligibility of the candidates was assessed with regard to the qualifications and income and also that there were adequate space for running a Post office.

4. That when the enquiry was going on, the opposite party no.3 who was interested in getting the

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appointment to Sri Ram Krishna Rathore as he has colluded him on extraneous considerations came to inspect the room and shop of cloths which was run by the applicant and it was said th by him that the cloths does not belongs to the applicant and the shop is not in proper form running the Post Office. This was done by him in order get the appointment to Shri Ram Krishna Rathore.

5. That after coming to know of the aforesaid facts, the Pradhan of the village namely Sri Durga Pd. Tiwari sent a complaint to opposite party no. 2 alleging therein that the opposite party no. 3 was not acting fairly and that the applicant was running a cloth shop for the last 7 years and was having adequate place for running of the Post Office. A true copy of the complaint dated 8.9.1989 is being annexed as Annexure-1.

6. That thereafter on 16.10.89 a joint representation by seven Pradhans of the various Gaon Sabhas which were fallen under the said post office sent a representation to opposite party no. 2 that the applicant may be appointed as Post Master and that he was the most competent person to do the said job and it was also indicated that he was a honest person. A true copy of the said representation dated 16.10.89 is being annexed as Annexure-2.

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7. That the Pradhan of the village also gave a representation to opposite party no. 2 indicating therein that the other two person namely Ram Krishna

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Rathore and Raghunanath Prasad were having loans in their names from the Bank and that they were not the honest persons who were not fit to be appointed as Post M<sup>Branch</sup> aster. A true copy of the representation dated 20.8.89 is being annexed as Annexure-3.

7. That it will not be out of place to mention here that Ram Krishna Rathore gave a certificate of handicapped so that he may be appointed on the post in question but the various Pradhans of the Gaon Sabhas gave in writing that he was a man of bad character and while he was operating 'Katta' his two fingers were injured and that he was not a handicapped person and also that his activities were not good with respect to the Society and as such his appointment on the post in question was not safe. A true copy of the representation dated 15.2.89 is being annexed herewith as Annexure-4.

8. That on the complaint of the Pradhan of the village with regard to the fact that the opposite party no.3 was not acting fairly and enquiry officer was appointed by opposite party no.2 namely Sri G.P.Dwivedi who conducted the said enquiry on 7.10.89 and found the version of the applicant to be correct that he was running a cloth shop for the last seven years so having ample cloths in his shop and that he was having proper room for running a Post Office. Sri G.P.Dwivedi after making the enquiry

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reported the matter in favour of the applicant.

9. That after the completion of the aforesaid enquiry conducted by opposite party no.2 and 3 the applicant was appointed on the post of Branch Post Master on 1.11.89 and he took over the charge on 3.11.89 and assumed his duty on 4.11.89. A true copy of the appointment letter is being annexed as Annexure-5.

10. That after the appointment of the applicant he started functioning peacefully and no complaint whatsoever was ever received against him except Sri Ram Krishna Rathore and Raghunath Pd. Ex Bajpai who were in a look to run down the applicant so that they could be appointed on the post in question. It is also note worthy that the opposite party no.3 who is in collusion with Sri Ram Krishna Rathore on an extraneous consideration.

11. That after the appointment of the applicant one more application was given by Sri Ram Krishna Rathore with effect that the applicant was having no power and no cloth shop as stated by him on which Sri K.K.Nigam was appointed as Enquiry Officer who conducted the enquiry on 16.1.90 and found the version of the applicant to be correct and all the licences for the seven years which were held by the applicant were shown to Sri K.K.Nigam and also he inspected the room in which the office was being run and reported the matter to opposite party no.2.

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.6.

A true copy of the statement given by the applicant dated 16.1.90 is being annexed as Annexure-6.

12. That when Sri Ram Krishna Rathore was not successful in his attempt to get the applicant removed from the post of <sup>Branch</sup> Post Master, then he manipulated things to the large extent and even went to the extent of fabricating a false certificate against the applicant, thus was done by moving an application to the S.D.M. for obtaining income certificate and property certificate on which a certificate was issued to Ram Krishna Rathore which was filed by him alongwith an application. On this application an enquiry was conducted by Sri V.S. Bajpai on 24.3.90 and it was found by the Enquiry Officer that the application neither contains with the signature of the applicant nor the application was moved by him and according the Enquiry Officer reported the matter to opposite party no.2 that the allegations made in the complaint made by Sri Ram Krishna Rathore are false and baseless.

13. That it will not be out of place to mention here that earlier a post office was being run in the room of Ram Krishna Rathore and when the applicant was appointed as Post Master he asked him to gave charge of all the ~~xxxxx~~ accessories of the post office but he did not do so and then ~~application~~ the applicant had made a complaint against him to the local police station and also sent an application

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to opposite party no.3 also. A true copy of the said complaint dated 7.1.90 and 20.1.90 are being annexed as Annexures -7 and 8 respectively.

14. That the applicant was issued an income certificate on 12.10.88 by the Tahsildar, Safipur district Unnao and in that income certificate an income was shown as 6,000/- yearly. A true copy of the said certificate dated 12.10.88 is being annexed as Annexure-9

15. That thereafter nothing could be known to the applicant and taking the benefit of Rule 6 the opposite party no.2 terminated the services of the applicant on 2.5.90 by a simplicitor order when in fact the termination was based on certain complaint for which enquiry was conducted and so the opposite party no.2 was duty bound to pass a reasoned order and the termination could not have taken place under Rule 6. A true copy of the termination order dated 2.5.90 is being annexed as Annexure-10

16. That the termination order has been passed on account of the fact that the opposite party no.3 is interested in getting the appointment to Sri Ram Krishna Rathore in whom he has colluded in on extraneous consideration and the opposite party no.2 without going into the fact that the termination could not be ordered in such a circumstances under Rule 6 when there was continuous complaint

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against the applicant. The opposite party no.2 has exercised the powers under Rule 6 so as to prevent from the applicant from approaching the Court and so also that his conduct to be justified in getting appointed some other person.

5. Grounds for relief with legal provisions

(1) Because the termination has been passed under the garb of Rule 6 by opposite party no.2 when it could not have been done by him and a reasoned order ought to have been passed when the termination has followed on the basis of complaints.

(2) Because the provisions of Rule 6 are not applicable in the present case and as such the order of termination is bad in law.

(3) Because the order of termination has been passed malafidely and on the pursuation of opposite party no.3 who was annoyed with the applicant from very beginning and wanted to get the appointment to Sri Ram Krishna Rathore on the post in question.

(4) Because the termination simplicitor could not have been passed when there was specific complaint against the applicant and enquiry has also been conducted by the Enquiry Officers on those complaints.

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(5) Because Rule 6 can only be invoked on ~~enforcement~~ account of unsatisfactory services or for administrative reason unconnected with the conduct.

(6) Because the termination has been ordered on the issue connected with the conduct therefore the same is bad in law.

(7) Because the provisions of Rule 8 were applicable in the case in hand before terminating services of the applicant and the provisions of Rule 6 have wrongly been invoked by opposite party no. 2.

(8) Because the opposite party no. 2 has acted illegally and has passed the termination order under the garb of Rule 6 after holding the enquiry which is totally illegal and bad in law.

(9) Because the termination order is perverse in law and facts both.

6. Details of remedies exhausted

That there is no alternative remedy to the applicant in the department as such he moves before the learned Tribunal.

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 with this

Handwritten signature

10.

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.

8- Relief Sought

In view of the averments made hereinabove the applicant prays for the following reliefs :

- (i) That the order of termination 2.5.90 may be quashed.
- (ii) That the entire record pertaining to the post of the applicant may be summoned and after looking into the same the order of termination may be quashed.
- (iii) That any other order or direction may be issued deeming the petitioner to be in continuous service alongwith all the consequential benefit, or any other relief which may be deemed fit and proper by the learned Tribunal
- (iv) That the costs of the petition be awarded in favour of the applicant.

9- Interim order, if any prayed for

The operation of the termination order dated 2.5.90 may be stayed during the pendency of this petition

10- Mode of filing the petition

The petition is being filing in the court

11.

through Counsel of the applicant who will  
be present at the time of admission.

11- Particulars of Postal Order filed in respect  
of the application fee

(a) Postal Order No. 8 02 414196

(b) Value of the Post order Rs. 50/-

12. List of enclosures

1. Annexure-1 : Copy of complaint dated  
8.9.1989 made by Sri Durga  
Pd. Tiwari Pradhan
2. Annexure-2 Copy of representation  
dated 16.10.89 made by  
Pradhans of Gaons Sabhas
3. Annexure-3 Copy of representation dated  
20.8.89 made by Pradhan
4. Annexure-4 Copy of representation dated  
15.2.89
5. Annexure-5 Copy of appointment letter  
dated 1.11.89
6. Annexure-6 Copy of statement given by  
applicant dt. 16.1.90  
application
7. Annexure-7 Copy of ~~complaint~~ dated 7.1.90
8. Annexure-8 Copy of complaint made by  
applicant dt. 7.1.90
9. Annexure-9 Copy of certificate dated  
12.10.88 issued by Tahsildar
10. Annexure-10 Copy of termination order  
dated 2.5.90

VERIFICATION

I, Hari Prakash Misra, son of Shri Devi  
Ghulam Misra, Extra Departmental <sup>Branch</sup> Post Master  
Lawani Kalan district Unnao resident of Village and

12.

Post Lawani Kalan, district Unnao do hereby verify  
that the contents of paras 1 to 16 of this petition  
are true to my personal knowledge which all I  
believe to be true and that I have not suppressed  
any material fact.

Lucknow: Dated

Dated : 18/5/90

*Hanmi*

Signature of the Applicant





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Annexure No 1

सेवा में,

अधीक्षक डाकघर,  
कानपुर ( मु0 ) प्रखण्ड,  
कानपुर ।

श्रे मान जी ,

विनम्र निवेदन है कि तबली कलौ उन्नाव के शाखा डाकपाल चयन के सम्बन्ध में इस उप प्रखण्ड के डाक निरीक्षक श्री बुद्धीलाल दिनांक 4-9-89 को जाँच करने हेतु आये थे सबसे पहले रामकृष्ण राठौर जी कि मौजूदा समय में गाँव के उप प्रधान भी हैं उनके यहाँ गये उसके पश्चात् श्री रघुनाथ के यहाँ गये और अंत में श्री हरीप्रकाश के यहाँ गये वहाँ उन्होंने जाँच के दौरान कहा कि तुम्हारे पास कपड़ा बगैरा कुछ नहीं है तथा तुम्हारा कमरा भी सही ढंग का नहीं है, श्री हरीप्रकाश विगत लगभग सात वर्षों से कपड़ा का व्यापार कर रहे हैं श्री हरीप्रकाश की स्थायी दुकान तबाने कलौ में है डाक निरीक्षक के कहने पर कि तुम्हारी दुकान में जो कपड़े का स्टॉक है वह किसी दूसरे का है इस पर श्री हरीप्रकाश ने कानपुर के कपड़ा बाजार से विभिन्न दुकानों के खरीदे हुए कपड़े के बिल बाउचर जो श्री हरी प्रकाश के नाम लिखे दिखाने के लिए कहा लेकिन उन्हें डाक निरीक्षक ने देखा नहीं । डाक निरीक्षक श्री बुद्धीलाल के कहानी एवं जवाबी भावी से ऐसा प्रतीत होता है कि उन्होंने अपनी जाँच रिपोर्ट श्री हरीप्रकाश के खिलाफ आप के कार्यालय को प्रस्तुत की होगी । जबकि श्री हरीप्रकाश मिश्र के पास कमरा भी है एवं कपड़े की स्थायी दुकान उनके निवास स्थान पर ही है । गाँव की चरवाही से ऐसा सुनने में आया है कि डाक निरीक्षक श्री बुद्धीलाल ने शाखा डाकपाल तबाने कलौ के चयन के सम्बन्ध

How  
Attested  
M. Singh  
A. W.

(A31)

126

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कुछ पैसा श्री रामकृष्ण राठौर से ले लिया है । तथा श्री राम कृष्ण राठौर को आश्वासन दिया है कि हम तुम्हारा इस पद पर चयन करा देंगे ।

अस्तु श्रीमानजी से विनम्र निवेदन है कि प्रखण्डीय कार्यालय के परिवार निरीक्षक अथवा सहायक अधीक्षक से इस प्रकरण की जांच कराई जाय ताकि सही और सुयोग्य व्यक्ति का चयन हो सके कहीं ऐसा न हो कि एक अपराधिक प्रवृत्ति का व्यक्ति का चयन हो जाय जिससे सरकार और जनता दोनों को हानि पहुँचे मुझे आशा ही नहीं पूर्ण विश्वास है कि मेरी प्रार्थना पर ध्यान देकर मेरे ग्राम की जनता का हित करेंगे । प्रार्थी

ह0/ दुर्गाप्रसाद

दुर्गाप्रसाद तिवारी (प्रधान)

ग्राम पंचायत लवनी विकास खण्ड फतेहपुर चौरासी

जनपद उन्नाव

8-9-89

Howe

Attested  
M. S. G. Pan:

A23

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Annexure No 3

श्रेमान् डाकभोधक जो कानपुर मु० प्रखण्ड कानपुर।

सेवा में निवेदन है कि ग्राम पो० लवानो कलाँ में जो शाखा  
डाकपाल का पद रिक्त है कि विवध सूत्री वदारा ज्ञात हुआ उस पद  
हेतु राम कृष्ण राठौर तथा रघुनाथ प्रसाद ने भी अपने प्रार्थना पत्र दिये  
हैं जिसमें राम कृष्ण राठौर ने अपनी भूमि हेतु बैंक में बन्धक कर  
इंजन उठाया था वह इंजन भी बैंक डाला था उसका पैसा अभी तक जमा  
नहीं हुआ और यह ग्राम पंचायत लवानो कलाँ के सदस्य एवं उप ग्राम प्रधान  
भी हैं इन्हें शाखा डाकपाल बननेका कोई औचित्य नहीं है। इन्होंने सुमन  
मैत्री डकल स्टोर के लिए अवध ग्रामीण बैंक फतेहपुर चौरासी से लोन लिया  
था उसका भी भुगतान नहीं हुआ रघुनाथ प्रसाद ने भी अपने भूमि  
स्टेट बैंक बाजार मऊ में बन्धक रखाकर प्री वीरस योजना में इंजन उठाया  
है और शायद कुछ खाद वगैरा का पैसा सहकारी समिति का बाकी है।  
जिसका भुगतान नहीं हुआ।

अतः श्रेमान् जो से प्रार्थना है यह दोनों व्यक्ति शाखा  
डाकपाल बनने योग्य नहीं हैं और इसकी उचित जाँच करके उचित  
कार्यवाही की जाये।

ह०/ दुर्गाप्रसाद तिवारी  
प्रधान

प्रार्थी  
हरीकृष्ण मिश्र  
ग्राम पो० लवानो कलाँ उन्नाव

हरीप्रकाश मिश्र

20-8-89

सत्य प्रति लिपि

Attested  
M. S. S. S.  
for

A32

A27

LS

Annexure No 2

माननीय

अधीक्षक जी,

16-10-89

डाकघर (मु0) प्रखण्ड कानपुर ।

सेवा में,

विनम्र निवेदन है कि जो लवानी कलाँ में शाखा डाकघर खुला हुआ है उसमें एक शाखा डाकपाल की आवश्यकता है । इस विषय में हम सब लवानी कलाँ डाकघर के अन्तर्गत आने वाले गाँवों के प्रधान एवं जनता यह चाहते हैं कि श्रीमान् जो एक ऐसे योग्य व्यक्ति का चयन करें जो इस डाकघर का विकास की एक सही दिशा दे सके । कहीं ऐसा न हो कि एक अयोग्य आतंकित एवं राजनीतिज्ञ व्यक्ति का चयन हो जाय जिससे डाकघर का भविष्य भी अन्यकार में पड़ जाय तथा जनता को भी परेशानों का सामना करना पड़े ।

श्रीमान् जो जिन लोगों ने आपके यहाँ निवेदन पत्र दिये हैं उनमें हरप्रकाश मिश्र ही एक ऐसे योग्य एवं कुशल व्यक्ति हैं यह अपना कपड़ा व्यवसाय अपने स्थायी निवास पर ही करते हैं जिनसे उम्मीद ही नहीं पूर्ण विश्वास है कि वे इस शाखा डाकपाल के पद पर ईमानदारी एवं कर्तव्य निष्ठा से कार्य करेंगे ।

श्रीमान्जी से प्रार्थना है हम सब ग्रामीणों के भविष्य को ध्यान में रखते हुए उचित व्यक्ति का चयन करने की कृपा करेंगे ।

महान दया होगी ।

- 1- पुतान चन्द्र पाण्डेय प्रधान सरहा सकतपुर जिला उन्नाव
- 2- रामगोपाल प्रधान ग्राम सभा रनियासऊ डाक सफोपुर उन्नाव
- 3- दुर्गाप्रसाद ग्राम पंचायत नवानी विकास खण्ड फतेहपुर चौरासीजनपद उन्नाव
- 4- बेचेलाल यादव प्रधान ग्राम सला खानपुर बिचौली वि० ख० फतेहपुर 84
- 5- शिवशंकर प्रधान हवासपुर
- 6- राजेन्द्र सिंह प्रधान ग्राम पंचायत अलाउद्दीनपुर उन्नाव

Harini  
Attested  
MBSGJ  
for

(A34)

102

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Annexure No 4

श्रीमान् डाक अधीक्षक महोदय  
कानपुर मु० प्रखण्ड कानपुर।

15-2-89

सेवा में,

सविनय निवेदन है आपके यहाँ से जो ग्राम लवानो कलौ हेतु  
अतिरिक्त निवभागीय डाकपाल की रिक्ति घोषित की गई है उसमें  
एक अभ्यर्थी रामकृष्ण एस/ओ बाबूलाल राठौर ने भी अपना प्रार्थनापत्र  
दिया है उसमें उसने अपना विकलांग का जो प्रमाण पत्र दिया है वह  
वह बिलकुल असत्य है जिसका ब्योरा निम्न है।

वह ग्राम सभा लवानो कलौ का एक अतिरिक्त आदमी है इसका सदैव  
का पेशा देशी तमंचा व रिखल्वर व नाना एवं कारतूस भरना था  
4-5 वर्ष पहले कारतूस भर रहा था तथा कारतूस के नाजायज फायर होने  
से इसकी भुंगुलियाँ कट गई थी जिसकी रिपोर्ट प्रेषित है। तथा इसने  
ग्राम प्रधान को अतिरिक्त देकर पहले के सभी डाकघर के प्रमाण पत्र  
प्रमाणित करवाये करना पड़ा।

अस्तु श्रीमान्जी से अनुरोध है कि इसका चयन होने में मेरे ग्राम सभा  
की उन्नति व डाकघर चलना असंभव हो जावेगा कृपया मेरी रिपोर्ट  
चुपचाप रखी जाय क्योंकि यह हमारे साथ अतिरिक्त कर सकता है।

उपरोक्त कथन सत्य है  
ह०/ दुर्गापुसाद तिवारी प्रधान

लेखक व गवाह  
वसंतकुमार पाण्डेय  
डी०एस० तिवारी

सत्यनारायण  
समसे री सिंह

*Handwritten signature*

*Attested  
m3848  
Shiv*

सत्य प्रतीतिपि

(A35)  
A30 18

Annexure No 5

the candidate for the job it is requested that the candidate

OFFICE OF THE SUPERINTENDENT OF POST OFFICES, KANPUR

Memo No. A-4/E.P.O./Lawan Kalan, Distt. Unnao. Dtd. 11/11/84. Regd

Shri Harsh Prakash Mishra s/o Shri Devi Gulam is here by appointed as E.D.B.P.O. with effect from the date take over. He shall be paid such allowances as are admissible from time to time.

2. Shri Harsh Prakash Mishra should clearly understand that this employee as E.D.B.P.O. shall be liable to be removed by him or by the authority by notifying the same in writing and that his conduct and service shall also be governed by the P&T Extra Departmental Agents (C & S) Rules 1964 as amended from time to time.

3. If these conditions are acceptable to him, He should communicate his acceptance in the enclosed proforma.

Supdt. of Post Offices,  
Kanpur (M) Dn. Kanpur-1.

Copy forwarded for information and necessary action to :-

1. Shri Harsh Prakash Mishra s/o Shri Devi Gulam Vill. & P.O. Lawan Kalan Distt. Unnao
2. S.D.O. Unnao, Kanpur/Unnao. He will please observe the following security Rs. 2000/- while the change is being made to the person appointed. There will also be sent attested duplicate copy to the office of the S.D.O. Unnao. Certificate of health be submitted.

3. District Magistrate, Unnao.

4. S.D.O. Unnao.

Hawm  
Attested  
M3509  
[Signature]

मैं दिनांक 4-11-89 से आरम्भ डाक घर लम्बानी में आम्बाडाकपाल के पद पर कार्य कर रहा हूँ जब बड़ा बच्चा लाला दुरीत S.D. 1 माहल जांच कर रहे थे उस समय मेरे पास कपड़े जो दुकान से सम्बन्धित सत्री काउचर लाहमेश तथा दुकान में कपड़े गोष्ठय के परन्तु S.D. 1 महोदय ने मेरे दुकान सम्बन्धित कागज पत्र पढ़ी देखे दुकान में रखे कपड़े लिखे जाते कि यह किसी और के हैं मैं लगा गग पिछले द-6 माह में कपड़ा कात कर रहा हूँ मैंने उसे लेकर दूर तक के लाहमेश की जोते कापी व काउचरों की जोते कापी अर्दीशक को भेज दी थी इस सम्बन्ध में S.D. 1 से मिलने उनको भ्रातृपण की रवैये से यह स्पष्ट हुआ कि उन्होंने मेरे खिलाफ रिपोर्ट लिखी है।

अतः मैंने अर्दीशक डाकघर को इस प्रकरण की पुनः जांच करने के लिये लिखा था जिसकी जांच श्री जीवपीठ त्रिवेदी जी सहायक अर्दीशक द्वारा दिनांक 7-10-89 को की गयी थी उनके हाथ में 84 में डी.पी. रुत गग किछोर त्रिवेदी गंगा पासपुर के आते थे श्री बी.रुत बाजपेयी जी मेरे चचेरे बहनेई हैं उनके साथ गरी आते थे वह उस दिनांक में गांव आते थे तथा उसी दिन सहायक अर्दीशक के साथ वापस चले गये थे निरीक्षक द्वारा मेरे विरुद्ध जांचे रिपोर्ट के बारे में श्री बाजपेयी जी ने मुझे कुछ नहीं बतलाया था।

यह समान मैं बिना किसी जांच देवाव के अपनी इच्छा से दे रहा हूँ इसमें किसी को हानि नहीं होगी।

हस्ताक्षर  
16-1-90

How

Attested  
10/3/90  
[Signature]

A87  
1231

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Annexure No 7

श्रीमान थाना अधिका महोदय  
थाना फतेहपुर 84 उन्नाव ।  
सेवा में,

विनम्र निवेदन है कि प्राचीं ग्राम पोस्ट लवानी कला का निवासी है जो लवानी कला डाकघर में शाखा डाकपाल के पद पर कार्यरत है प्राचीं को चार्ज 3-11-89 को औवरसियर ने अफर दिया था उस समय पत्र पेटो शाखा डाकघर लवानी कला एवं नो एडमोशन की प्लेट में रामकृष्ण राठौर के निजी ताले पड़े होने के कारण चार्ज में नहीं मिले थे जबकि औवरसियर साहब ने उनके बड़े भाई से कह भी दिया था कि रामकृष्ण से कहा देना कि ताले छालेकर हरी प्रकाश शाखा डाकपाल के यहाँ डाकघर में दे दें परन्तु आज तक उन्होंने ताले नहीं खोले हैं इसके उपरान्त मैंने अपने निवृत्तीय निरीक्षक जो को शिकायत भेजी तदनुसार निरीक्षक जो ने औवरसियर को आदेश दिया औवर सियर ने एक रजिस्ट्री रामकृष्ण को भेजी जो उन्हें मिल चुकी है और एक मेरे यहाँ भेजी जो मुझे भी मिल चुकी है उसमें लिखा है रामकृष्ण को रजिस्ट्री पाने के सात दिन तक यदि उक्त सामान डाकघर न भेजे तो फतेहपुर 84 थाना में रिपोर्ट दर्ज कराकर हमें सूचित करें । रामकृष्ण की रजिस्ट्री प्राप्त हुए आज दस दिन हो रहे हैं ।

अतः श्रीमान् जो से निवेदन है कि पत्र पेटो शाखा डाकघर लवानी कला एवं नो एडमोशन की प्लेट दि दलाने की कृपा करें ।

ह0/ हरीप्रकाश मिश्र  
शाखा डाकपाल शाखा डाकघर लवानी कला

ह0/ अपठनम  
7-1-90

उन्नाव 7-1-90

Harmi  
Attested  
M. Singh  
Hau



Attest to  
M. B. B. B. B.

A29  
A33  
22

Amnepur No 9

कार्यालय तहसीलदार सफेपुर ( उन्नाव )

आय/ जाति एवं मूल निवास प्रमाण पत्र

संख्या 2028

जारी होने का दिनांक 12-10-88

प्रमाणित किया जाता है कि श्री हरीप्रकाश पुत्र श्री देवीगुलाम मिश्र बिवासी लवानी परगना फतेहपुर 84 तहसील सफेपुर ( उन्नाव ) के मूल निवासी हैं । ग्राम लवानी जिला उन्नाव में समान्यता रूप से निवासी करते हैं ।

प्रमाणित किया जाता है कि श्री हरी प्रकाश पुत्र श्री देवी गुलाम निवासी लवानी परगना फतेहपुर 84 तहसील सफेपुर उन्नाव की समस्त श्रेणी से वार्षिक आय 6000/- ( छः हजार रुपया ) लगभग होती है ।

ह0/ अयोध्याप्रसाद

मिश्र तहसीलदार सफेपुर

उन्नाव

सत्य प्रति लिखिए

*How*  
*Attested*  
*M3888*  
*for*

A 40  
A34

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

M. P. No. 447/90 CL

Misc. application No. of 1990.

On Behalf of Respondents.

In

Misc. application No..... of 1990

O.A. No.175 of 1990.

Hari Prakash Misra .....Applicant.

Versus

Union of India & Others . . . . . Respondents.

TO

The Hon'ble Vice-Chairman & his other companion  
members of the aforesaid tribunal.

The humble application on behalf of the respondents  
most respectfully sheweth as under :-

1. That full facts and reasons have been set out in  
the accompanying Counter-affidavit *Qs*
2. That for the facts stated in the accompanying *Qs*  
affidavit, it is expedient in the interest of justice  
that the application for interim relief may be dismissed.

PRAYER.

It is, therefore, most respectfully prayed that  
this Hon'ble Tribunal may kindly be pleased to admit  
the accompanying Counter-affidavit *Qs* & to dismiss the  
application for Interim relief with costs.

Dated:

*J. Chandra*

Addl. Central Govt. Standing Counsel.

*Filed today  
23/7/90*

(141)  
A25

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

Counter Affidavit against Application  
for Interim Relief

In :

Misc. Application No.        of 1980

In re :

O.A. No. 175 of 1980

Hari Prakash Misra.....Applicant

VERS US

Union of India and others.....Respondents

I <sup>deponent</sup> K. B. Sharma        aged about 56 years  
s/o Sri S. B. Sharma Superintendent of Post Offices  
(M) Division, Kanpur do he-reby solemnly affirm and  
state as under :-

1. That the deponent has read the application for  
Interim Relief filed by the applicant & has understood  
the contents thereof. He is well conversant with the  
facts of the case deposed thereafter.

2. That Shri Hari Prakash Misra, the applicant was  
appointed vide order dated 1.4.80 as Extra Departmental  
Branch Post Master (EDBPM) Lawni Kalan by respondent  
No.2 with a clear understanding that his employment  
as EDBPM shall be in the nature of a contract liable  
to be terminated by him or by the department by notifying  
the other in writing and that his conduct and service  
shall be governed by P&T Extra Departmental Agent  
(C & S) Rules 1964 (Annexure 5 of the applicant)

3. That the appointment of the applicant was set-  
aside by the Director of Postal Services, Kanpur after  
careful consideration, of the case.

*[Signature]* .....2/-

4. That the service of the applicant was terminated under Rule 6 of the said rules. The termination order was not penal in nature.

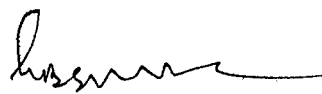
5. That the applicant refused to hand over ~~own~~ charge of the E.D. Branch Post Office Lawani Kalan after receipt of the termination order.

6. That under the above circumstances the charge of the E.D. Branch Post Office Lawani Kalan was assumed by ~~EDMP Lawani Kalan~~ <sup>engaged</sup> Sri Ram Krishna Rathore on 11.5.90 who was appointed <sup>3</sup> by respondent no. ~~2~~ in place of the applicant. The government records and cash have been illegally kept by the applicant.

7. That <sup>the EDMP</sup> ~~Sri Ram Krishna Rathore~~ has been working as a full fledged E.D. Branch Post Master Lawani Kalan since 11.5.90.

8. That it has become a practice with the Extra Departmental Agents not to hand over charge of their office when the termination orders have been served upon them and in such circumstances parallel post offices have to be opened.

Dated:

x   
Deponent

VERIFICATION

I the above deponent verify that the contents of paras ~~to~~ 1 are true to my own knowledge, and those of paras 2 to 8 are <sup>based on evidence</sup> true to my belief, that nothing deposed therein is false, nor anything material has been concealed. ~~So help me God.~~

Dated:

x   
Deponent

I identify the deponent who has signed this affidavit before me today.

Dated:

ADVOCATE

ब अदालत श्रीमान्  
[वादी अपीलान्त]

प्रतिवादी [रेस्पाडेन्ट]

Central Adm. Tribunal  
Cable Bands, Luck

वकालतनामा

महोदय

A37

A43



टिकट

वादी (अपीलान्त)

Hans Prakash Mehta

बनाम *Shri. J. Jacob Chaudhary* प्रतिवादी (रेस्पाडेन्ट)

न० मुकद्दमा ८५१७० सन् १९९०(१) पेशी की ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री *J. Jacob Chaudhary*  
*Adv. Gen. Secy. Standing Counsel, Lucknow*

वकील

महोदय

एडवोकेट

नाम अदालत  
मुकद्दमा न०  
नाम फरीकन

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पेरवी व जबाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौठावे या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रुपया जमा करे या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकर को भेजता रहूंगा अगर मुकद्दमा अदम पेरवी 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*  
*Deputed*

हस्ताक्षर *Shri. B. Sharma*  
Supd. of Post Office  
Kampur  
Kampur

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १६

ई०

स्वीकृत

Am

CA A38

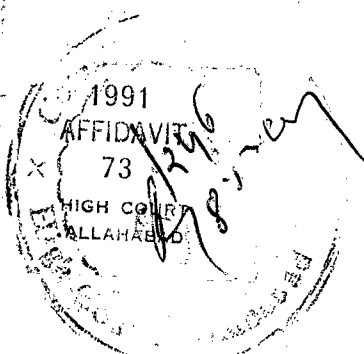
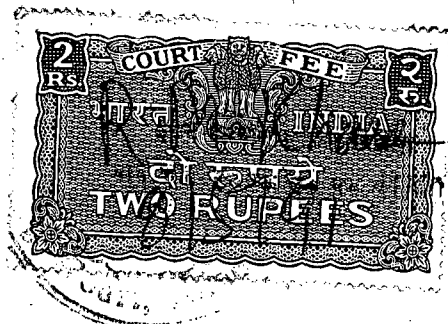
f.f. 27-9-91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

CIRCUIT BENCH LUCKNOW

Counter Affidavit on behalf of Respondants

O.A. No.112 of 1989 (L)



A. Sanyal ... Applicant.

Versus

Union of India and others ... Respondants.

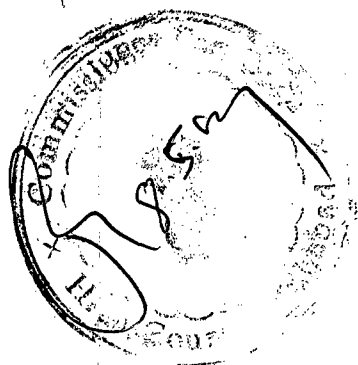
I, R.M. Khare, aged about 57 years, son of Late Shri Kamla Saran Khare, Divisional Engineer ( Legal ) in the office of Chief General Manager Telecommunication U.P. Lucknow do hereby solemnly affirm and state on oath as under :-

1. That the deponent is Divisional Engineer ( Legal ) in the office of Chief General Manager Telecommunication U.P. Lucknow as such fully acquainted with the facts of the case. The contents of the petition have been read over and explained to the deponent who has understood the same and its parawise reply is as follows :

2. That the contents of paragraphs 1, 2, and 3 of the petition need no comments.

That ~~the contents of~~ the contents of para 4.1 of the petition need no comments.

.../2.



Deeshand ( भार. एम. खरे ) R M KHARE 3. Divisional Engineer Legal Cell of Chief General Manager Telecommunication Lucknow

A45

A38

-: 2 :-

4. That with respect to the contents of para 4.2 of the petition it is submitted that a sum of Rs.27,555.00 on account of D.C.R.G. was payable to the ~~commissioner~~ <sup>petitioner</sup> after retirement on receipt of clearance certificate to the effect ~~xxx~~ <sup>P</sup> that no disciplinary case is pending/contemplated against the applicant.

5. That with respect to the contents of para 4.3 of the petition it is submitted that since D.C.R.G. authority for payment was issued on 13.12.1983 that is within three months of receipt of Disc./vigilance clearance certificate dated 8.12.83 from General <sup>communication</sup> Manager Tele~~phone~~ U.P. Circle, no interest on D.C. R.G. is payable.

6. That with respect to the contents of para 4.4 of the petition only this much is admitted that the payment of D.C.R.G. was made to the applicant on 20.12.1983 vide Cheque dated 20.12.1983. Rest of the contents of this para as stated are denied. It is relevant to mention here that a case for mis-use of departmental vehicle was pending for decision before Directorate and after the decision of the Directorate the applicant deposited an amount of Rs.492/- on <sup>12-10-1983</sup> ~~10-12-1983~~ for mis-use of departmental vehicle and there after order for vigilance clearance were issued by the General Manager Telecommunication U.P. Circle Lucknow and on account of this effect

the authorisation and payment of D.C.R.G. was delayed.

.../3.

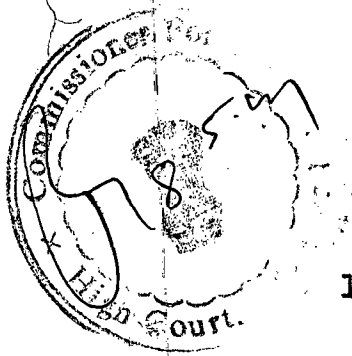


*Rishabh*  
R. M. KHARE  
संरक्षक अभियन्ता (विधि कक्ष)  
Divisional Engineer (Legal Cell)  
मुख्य सहायक अभियन्ता  
Chief General Manager  
Lucknow



A46  
A40  
-: 3 :-

7. That the contents of para 4.5 of the petition as stated are denied. There was no delay on the part of the department as a case for the ~~mis~~ misuse of departmental vehicle was pending for decision. The rate of interest on delayed payment of D.C.R.G. is 5% per annum in case of payment is delayed due to administrative lapses for more than three months as per Rule-68 of C.C.S. Pension Rules.
8. That with respect to the contents of para 4.6 of the petition it is submitted that the application dated 27.12.1986 was received through Vigilance Section on 11.5.1987 and the retiree was suitably replied vide letter dated 21.5.1987.
9. That the contents of para 4.7 of the petition are not disputed. It is further submitted that since the payment of D.C.R.G. become due on 8.12.83 - the date of receipt of Disc./Vigilance Clearance report and the payment authority was released on 13.12.1983 there was no delay.
10. That the contents of para 4.8 of the petition need no comments.
11. That the contents of para 4.9 of the petition are not disputed. Both the applications were referred to Director General Telecommunication New-Delhi for necessary orders and the applicant was informed through letter dated 1.6.1988.



*Subhash*  
R. M. KHARE  
मंडल अभियंता  
Divisional Engineer (Legal)  
मुख्य मंडल प्रशासक  
Chief General Manager  
Lucknow

That the contents of para 4.10 of the petition  
.../4.

A47  
A41  
-: 4 :-

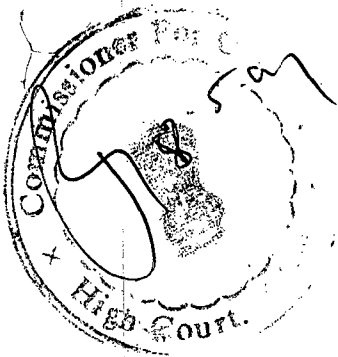
are not disputed.

13. That with respect to the contents of para 4.11 of the petition it is submitted that there was no delay in the payment.
14. That the contents of paras 4.12, 4.13 and 4.14 of the petition as stated are denied. It is further submitted that as per enquiry report ~~submitted~~ submitted by Shri O.P. Gupta Director TC o/o DG P & T New Delhi vide his D.O. No. 103-16/82-TC&I dated 20.4.1982 (Confidential) to Shri G.G. Barve G.M. UP. Telecom Circle Lucknow, it was alleged that on 4.1.1982 Shri A. Sanyal the Ex CS CTO Agra sent the Jeep Bearing no. UTR-8199 belonging to DET Agra for his personal work to Etah on the plea of his tour. On enquiry it was established that the vehicle moved a distance of 320 Km. as per diary of the driver of the Jeep, the meter reading was recorded from 27098 to 27418 i.e. 320 Km.. The diary of the Jeep was seen by the Enquiry officer brought by the driver himself, while the distance of Etah from Agra is only 89 Kms. and from Tundla to Etah is only 69 Kms.

On the basis of the enquiry report the officer was asked to submit his comments on six allegation including allegation for the misuse of Govt. vehicle, made against him through a D.O. Letter No. LNV/M-15/36/82/4 dated 6.5.1982. In reply to this reference the applicant vide his D.O. No. CS/VIG/81-82/30.4.81 dated 21.5.82, the applicant himself had offered that

"In all probability, I signed the Jeep diary and Even if I have not signed Diary, I own the responsi-

.../5.



*Rushare*  
R M KHARE  
Divisional Engineer Legal Cell  
Chief General Manager  
Lucknow

(A48)

A42

-: 5 :-

bility and in this direction what ever the length of journey which may be felt as extraneous, I am prepared to pay for it. I may be intimated the amount which I am to pay."

On finding of the CVC it was established that the Journeys undertaken by Shri A.Sanyal were not treated as official. Consquently the CVC advised the recovery of charges for the extraneous journeys to the tone of Rs.492/- from the applicant, accordingly the applicant was asked to pay an amount of Rs.492/ for which a bill vide letter no.G-21/81-83/136 dated 8/83 was forwarded to the applicant by the DET Agra. The applicant paid this amount in the office of the DET Lucknow on 12.10.1983 vide Receipt No.MS-1940/15. It is submitted that a case was pending against the conduct of the officer while he was in service for which the CVC was examining the various allegations against him. On receipt of the intimation dated 13.10.1983 of deposit of an amount of Rs.492/- by the applicant, the vigilance case ~~was~~ pending against him was closed and a vigilance clearance certificate was issued to the concerned authority on 7.11.83 vide letter no.VID/M-9/24/83/3 dated 7.11.83 from Vigilance Officer o/o GMT Lucknow for the release of due pension and DCRG etc. subject to observance of rules & regulations concerning to that payments. The allegations that action of the answering respondents for withholding DCRG etc were vindictive malafide, arbitrary and illegal are quite baseless. In fact the applicant is himself responsible due to his

malafide conduct in using the Government vehicle and

.../6.



*Rushad*  
R. M. KHARE  
मुख्य अभियन्ता (विधि शाखा)  
Divisional Engineer (Legal Cell)  
मुख्य महासचिव  
Chief General Secretary  
Lucknow

A50  
A44

-: 7 :-

19. That the contents of para 4.19 of the petition as stated are denied.

20. That the contents of para 4.20 as stated are denied. The findings of the enquiry officer is just and valid. It is further submitted that it was an established fact on the basis of the findings of the CVC as well as the enquiry taken by the Director(TC) o/o DG P&T New Delhi that the applicant while acting as CS CTO Agra on 4.1.1982 had misused the Government vehicle of DET Agra for his personal work and as such he was to pay the charges of the extraneous journey on the basis of meter reading which showed the reading from 27098 to 27418 i.e. 320 Kms. accordingly the applicant was responsible to pay the charges of same to the tune of 320 Kms. @ Rs.1.5 per kilometer which the officer should have objected if he had to pay the charges beyond 320 Km. if any, at the very moment when he had credited this amount of Rs.492/- on 12.10.83 to the A.O. o/o DET Lucknow, as the officer was fully aware of this fact of movement of distance run by the departmental vehicle and when used by him.

21. That with respect to the contents of para 4.21 of the petition it is submitted that the applicant has deposited the sum of Rs.492/- after admitting the guilt.

22. That the contents of para 4.22 of the petition as stated are denied.

*R. M. Kharb*  
R. M. KHARB  
महानिरीक्षक (प्रति कानून)  
Divisional Engineer Legal Cell  
महानिरीक्षक (प्रति कानून)  
Chief General Manager  
Lucknow

~~Aug~~ A93

7

Rufhar (आर. एम. खर्) R. M KHARB of the p  
बल बागवत (विन क-र)  
International Engineer, Lead deposite  
A. A. रस भारवाडा म. वि. म.  
Chief General Man...  
Lucknow

प्र. १०. एक प्रमुख महानगर में  
A. न. प्रमुख महानगर में  
प्र. १०. एक प्रमुख महानगर में  
A. न. प्रमुख महानगर में  
प्र. १०. एक प्रमुख महानगर में  
A. न. प्रमुख महानगर में

A50  
A44

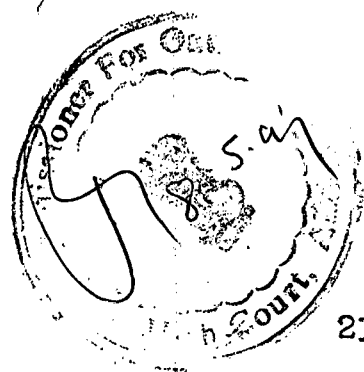
-: 7 :-

19. That the contents of para 4.19 of the petition as stated are denied.

20. That the contents of para 4.20 as stated are denied. The findings of the enquiry officer is just and valid. It is further submitted that it was an established fact on the basis of the findings of the CVC as well as the enquiry taken by the Director(TC) o/o DG P&T New Delhi that the applicant while acting as CS CTO Agra on 4.1.1982 had misused the Government vehicle of DET Agra for his personal work and as such he was to pay the charges of the extraneous journey on the basis of meter reading which showed the reading from 27098 to 27418 i.e. 320 Kms. accordingly the applicant was responsible to pay the charges of same to the tune of 320 Kms. @ Rs.1.5 per kilometer which the officer should have objected if he had to pay the charges beyond 320 Km. if any, at the very moment when he had credited this amount of Rs.492/- on 12.10.83 to the A.O. o/o DET Lucknow, as the officer was fully aware of this fact of movement of distance run by the departmental vehicle and when used by him.

21. That with respect to the contents of para 4.21 of the petition it is submitted that the applicant has deposited the sum of Rs.492/- after admitting the guilt.

22. That the contents of para 4.22 of the petition as stated are denied.



*R. M. Kharb*  
R. M. KHARB  
मंडल अभियन्ता (निविदा)  
Divisional Engineer (Legal Cell)  
मंडल मुख्यालय, लखनऊ  
Chief General Manager  
Lucknow

.../8.

-: 8 :-

23. That with respect to the contents of 4.23 of the petition it is denied that the said amount is liable to be recovered from respondents together with interest @ 18% per annum.

24. That the grounds taken in the petition are untenable, the petition has no force and deserves to be dismissed with cost.

Lucknow.

Dated: 8-5-91

Verification

I the above-named deponent do hereby verify that the contents of paras 1 to 22 of this affidavit are true to my own knowledge and the contents of para 23 and 24 of this affidavit are believed by me to be true on the basis of the legal advice, and no part of it is false and nothing material has been concealed, so help me God.

Lucknow.

Dated: 8-5-91

I identify the deponent who is personally known to me and who has signed in my presence.

Solemnly affirmed before me on 8.5.91 at 1.30 a.m./p.m. by Sri R.M.Khare, the deponent who is identified by Sri Mohan Lal, Clerk to Sri U.K. Dhaon, Advocate High Court, Allahabad.

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

*Deekhar*  
R. M. KHARE  
Divisional Engineer (Legal Cell)  
Chief General Manager  
Lucknow

*R.S.*  
K. B. JAISWAL  
Advocate

Clerk to Sri U.K. Dhaon Advocate  
Lucknow

73/246-8-5-91

(A52)      446

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW.

COUNTER <sup>obj</sup>AFFIDAVIT ON BEHALF OF THE RESPONDENTS.

In

Case No. O.A. 75 of 1990.

Hari Prakash Mishra. . . . . Applicant.

Versus

Union of India & Others . . . . . Respondents.

I, K. B. Sharma aged about 56 years son of late Shri S. B. Sharma, Superintendent of Post Offices(M) Division, Kanpur do hereby solemnly affirm and state as under :-

1. That the deponent is competent to swear this affidavit on behalf of the respondents.
2. That the deponent has read the petition filed by the applicant and under-stood the contents thereof.
3. That the deponent is well conversant with the facts of the case hereinafter.
4. That it will be worthwhile to give a brief history of the case as under :-

BRIEF HISTORY OF THE CA-SE.

On creation of the post of Branch Postmaster Lawani Kalan, Unnao, a <sup>requisition</sup> ~~representation~~ was sent to Employment Exchange, Unnao on 6.4.88 for <sup>personnel</sup> ~~respondents~~ atleast three suitable candidates for appointment on the said post within 30 days. The Employment Exchange Unnao sent a list of three candidates on 25.4.88. None of the candidates nominated by Employment Exchange was found suitable. As such the post was notified by public advertisement on 16.9.88. The last date ~~was~~ for receipt of application was fixed for 15.10.88. In response of above said advertise-

- - ment eight candidates had applied for the post.

...2/-



A52

A47

On enquiry none of the candidates were found fit for the post. As such further advertisement was made on 24.2.89. The last date for the receipt of application was fixed for 23.3.89. In response to above advertisement nine (9) candidates had applied for the post. After making necessary enquiry, Shri Hari Prakash Mishra S/O Shri Devi Gulam r/o Lawani Kalan, Unnao was appointed as Extra Departmental Branch, Post-Master (EDBPM) Lawani Kalan, Unnao on 1.8.89 with a clear understanding that his appointment will be in <sup>the</sup> nature of a contract liable to be terminated by him or the department after notifying the other in writing and that his contract & service shall be governed by the Post & Telegraph Extra Departmental Agents ( Conduct & Service ) Rules , 1964. Later on the appointment of above named candidate was terminated on 2.7.89 under rule 6 Extra Departmental Agent ( Conduct & Service ) Rules 1964. The applicant has not submitted any representation for review of the order of his termination as required under rule 16 of E.D.A. ( C & S ) Rules 1964. The applicant has approached the Hon'ble Tribunal for relief without exhausting Departmental channel.

PARAWISE COMMENTS.

5. That the contents of paras 1 to 3 of the application need no comments except that the applicant has <sup>not</sup> exhausted the departmental remedy available to him.
6. That the contents of para 4 (1) to 4(3) need no comments.
7. That the contents of para 4(4) are partly admitted. It is denied that the respondents No.3 was interested in the appointment of Shri Ram Krishan Rathore.

*[Signature]* .....3/-

8. That the receipts of the representations indicated in paras 4 (5) to 4 (7) are acknowledged.
9. That the contents of paras 4 (8) and 4 (9) are admitted.
10. That the contents of para 4 (10)<sup>are</sup> partly admitted. But it is denied that respondent No.3 was in collusion with Shri Ram Krishan Rathore.
11. That the contents of para 4 (11) are admitted.
12. That the contents of para 4 (12) and 4(13) do not relate to the respondents, hence no comments<sup>are</sup> offered.
13. That the contents of para 4 (14) are admitted.
14. That in reply to the contents of para 4(15) it is submitted that the Director Postal Services Kanpur who is the reviewing authority in such cases, found that while selecting candidate from the post of Extra Departmental Branch Post Master, Lawani Kalan, Dist..Unnao, the appointing authority had ignored the candidate of more suitable candidates for the said post. As such the services of the applicant were terminated vide order dated 2.5.90 under rule 6 of the Posts and Telegraph Extra Departmental Agents ( Conduct & Service) Rules, 1964.
16. That the contents of para 4 (16) are denied. The position has been explained in the foregoing paragraphs.

~~From That in reply~~

4/-

17. That in reply to paras 5 (i) & 5(2), it is stated that the order of termination dated 2.5.90 was not passed by respondent No.2 on the basis of any complaint against the applicant received by him. ~~xx~~ The appointment of the applicant was in the nature of a contract liable to be terminated by him on the department after notifying the other in writing and that his services were governed by the provisions of the E.D.A. Rules, 1964. As such there was no legal infirmity in terminating the applicants appointment by the appropriate authority under Rule 6 of the said rules.
18. That the contents of para 5 (3) are denied . It is submitted that the respondent No.3 had no role to play in the appointment of the applicant.
19. That the contents of paras 5(4) to 5(9) are denied. Submissions made in para 17 above are re-iterated.
20. That in reply to the contents of para 6, it is submitted that there is a departmental channel for reviewing the order of termination under Rule 16 of the said rules. The applicant should have available <sup>ed. of</sup> this departmental remedy before seeking relief from this Hon'ble Tribunal.
21. That the contents of para 7 need no comments.
22. That in view of the submissions made in the

*husem* .....5/-

above paragraphs the relief sought for in para 8 and the interim relief prayed for in para 9 of the application are not admissible and liable to be rejected.


23. That the contents of paras 10 to 12 need no comments.

Additional Submissions.

24. That the applicant has not impleaded <sup>EDMP Lawani</sup> ~~Sri Ram Krishan~~ <sup>Kalan</sup> <sup>engaged.</sup> ~~Rethore~~, who has been appointed in place of the applicant; as such his application is liable to be dismissed for non joinder of necessary party.

25. That in view of the facts of the case mentioned above the application is liable to be dismissed.

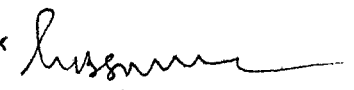
Dated : 24.7.20

x   
Deponent.

VERIFICATION

I, the above deponent verify that the contents of paras 1 to 3... of this affidavit are true to my own knowledge and those of paras 4... to 25... are true to my belief that nothing deposed therein is false nor any thing material has been concealed. So help me God.

Dated : 24.7.20

x   
Deponent.

I, identify that deponent who has signed before me today.

Dated:

Advocate.

(A57)  
A51

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH  
LUCKNOW

D.A.No. 175 of 1990. A.B.

Hari Prakash Misra

... Applicant

Versus

Union of India and others

... Respondents

F.F. 25.7.90

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Rejoinder affidavit to the objection against interim relief and also to the counter/Written Statement submitted by respondent no. 2 on behalf of all the respondents.

- - - - -

I, Hari Prakash Misra aged about 33 years s/o Shri Devi Gulam Misra, r/o Village & P.O. Lawani Kalan, Distt. Unnao, 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 objection and counter/W.S. filed by the respondents have been read out to him and their contents explained to the deponent in Hindi which he has fully understood and is replying to the same.
2. That the contents of para 1 of the objection need no reply.
3. That in reply to the contents of para 2 of the objection, it is stated that the deponent was appointed vide order dated 1.11.89 and not dated 1.4.89 as wrongly stated as would be clear from the appointment order, a true copy of which is Annexure no. 5 to the application. The nature of appointment is given in the appointment order and the proforma used is one which is prescribed for regular appointment, vide DG P&T letter no. 43-68/71 Pen dated 6.2.1973. The

*Hari*

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- 2 -

appointment was against a vacant post and after making all formalities in accordance with Rules. It was not a provisional appointment as specified by DG P&T letter no. 43-4/77 Pen dated 18.5.79, for which different proforma as prescribed vide Annexure 'A' and Annexure 'B' have been provided. The deponent's appointment is not liable to be set aside at the sweet will of the appointing authority.

4. That the contents of para 3 of the objection are denied as stated. The Director of Post Offices is not the appointing authority and under Rule 6 of the EDA (Conduct & Service) Rules 1964 he has no authority to oust the deponent from his post. There was no illegality in the appointment of the deponent, who was selected after due observance of rules after proper notification, out of a number of candidates, being the most suitable one and the Director Postal Services could not over-ride the discretion of the Supdt. of Post Offices, who is the appropriate appointing authority. In any case, the deponent is entitled to get a show cause notice, as he has acquired an interest to the notice and his ouster without any notice is against equity and natural justice and hence arbitrary, prejudicial, malicious and illegal.

5. That the contents of para 4 of the objection are denied as stated. The deponent was validly and regularly appointed and he having acquired an interest could not be terminated under the shelter of Rule 6. The termination order is penal in nature. It is arbitrary and illegal.

6. That the contents of para 5 are denied as stated. It is wrong and malicious to say that the deponent refused to hand over the charge of E.D.

Hemi

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Branch Post Office. The deponent was shocked at the abrupt, arbitrary and malicious action of the respondents that he felt nervousness and fell ill. The deponent handed over the charge of the Post Office to his brother and has been under treatment.

7. That the contents of para 6 of the objection are wrong and hence they are denied. The deponent's brother worked at the Post Office till 15.5.90 and closed and sent the Postal Dak to the Sub Office. The Overseer Shri Shankar Dayal Sharma received the Dak on 15.5.90 and worked upto 22.5.90 as Branch Postmaster Lawani Kalan at Fatehpur Chaurasi and thereafter Shri Hari Kishore Misra, the ED DA has been entrusted with the work of the Branch Postmaster and Shri Ram Kishan Rathaur has been engaged as EDDA by the SDI Shri B.L.Kureel, respondent no. 3 against the procedure in vogue in such cases. It is incorrect to say that Shri Ram Kishan Rathaur has been appointed in place of deponent and he assumed charge on 11.5.90. It is also wrong to say that the Government records and cash have been illegally kept by the deponent.

8. That the contents of para 7 are denied and the averments made in pre-para are re-iterated. The deponent has documentary evidence to prove his assertion, which would be shown before the Tribunal.

9. That the contents of para 8 of the objection are vague, indefinite and irrelevant and hence they are denied.

10. That in reply to the contents of para 1 of the counter affidavit, it is stated that no authority has been filed to swear the affidavit on behalf of all the defendants.

11. That paras 2 and 3 of the counter affidavit

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need no reply.

12. That in reply to the contents of para 4 it is stated that the deponent applied in response to notification and he having been adjudged to be the best candidate was selected and appointed to the post of ED BPM Lawani Kalan by order dated 1.11.89 as stated. As regards the nature of appointment and the proforma used in the order, attention is invited to para 3 above. The appointment was terminated wrongly by order dated 2/7.5.90 and not 2.7.90 as stated. No appeal lies against the order of termination and the submission of representation for review is not a statutory and obligatory provision. Moreover, the impugned order was passed at the instance and behest of the Director Postal Services as now stated and therefore, no useful purpose was to be achieved by making any representation to the DPS who was already prejudiced. The deponent had, therefore, no efficacious remedy except to approach this Hon'ble Tribunal for justice.

13. That para 5 of the counter needs no reply except that it is wrong to say that the applicant has not exhausted the departmental remedy available to him. In this regard, ~~xxx~~ pre-para 12 be perused.

14. That para 6 needs no reply.

15. That in reply to contents of para 7, it is denied that the respondent no. 3 was not interested in the appointment of Shri Ram Kishan Rathaur, who has actually been engaged as EDDA after ousting the deponent. It is also pointed out that the respondent no. 2 who has filed the affidavit, cannot reasonably say whether or not the respondent no. 3 was interested in the appointment of Shri Rathaur, it being a personal

Hon'ble



matter.

16. That paras 8 & 9 of the counter need no reply.

17. That the contents of para 10 of the counter are denied as stated and the contents of para 4(10) are re-asserted.

18. That para 11 of the counter needs no reply.

19. That in reply to the contents of para 12 of the counter, the contents of para 4(12) and 4(13) of the application are re-asserted.

20. That the contents of para 13 of the counter, need no reply.

21. That the contents of para 14 of the counter are denied as stated. Rule 16 of the EDA (Conduct and Service) Rule 1964 does not provide Review of orders of appointment and in any case no punishment can be imposed unless a reasonable opportunity of making a representation has been given. The DG P&T letter no. 43-43/81 Pen dated 25.4.81 lays down that in case of irregularities committed in the appointment of ED Agents, it would be more appropriate that action should also be taken against such officials responsible for not following the relevant instructions. The appointing authority is cast with an obligation to take due care and to make recruitment to the post of ED Agents invariably in conformity with the standing instructions issued by the Directorate from time to time. The plea that the appointing authority had ignored the candidate of more suitable candidates for the post is vague, indefinite and irrelevant as it does not clarify which of the rules or instructions were violated by the appointing authority and in what way the appointment of the deponent was illegal or which of the candidate

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and in what manner were more suitable than the deponent. ~~xxxxxxxxxxxxxxxxXXXXXXX~~ Para 4 of the counter clearly shows that the appointing authority took due care in making appointment of the deponent in conformity of the rules and as he was found to be the most suitable candidate. The services of the deponent could not be terminated at the instance of the Director Postal Services without observing the principle of equity and natural justice and without giving a show cause notice and opportunity of hearing. The services of the deponent were wrongly and arbitrarily terminated vide order dated 2/7.5.90 as wrongly stated.

22. That the contents of para 16 are denied. The position has been explained above. The contents of para 4(16) are re-iterated.

23. That the contents of paras 17 to 19 are denied as stated and the contents of paras 5(1) to 5(9) of the application are re-asserted as also the submissions made above.

24. That the contents of para 20 are denied as stated. There is no appeal against the order of termination. The review is not a statutory right and the deponent is not under a legal obligation to follow it. The deponent having no efficacious remedy under the Rules, had to come before this H-on'ble Tribunal with his instant application.

25. That para 21 needs no reply.

26. That the contents of para 22 are denied as alleged. In view of the facts and circumstances stated by the deponent in his application and above, the relief sought for in para 8 and interim relief prayed for in para 9 are cogent and sustainable and liable to be

Hon'

allowed with cost.

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

28. That para 24 is wrong and denied. Shri Ram Kishan Rathore has no locus standi and it is not necessary to implead him as a party to the case.

29. That the contents of para 25 are denied. In view of the facts and circumstances of the case, the application is liable to be allowed, and the order of termination quashed with all benefits and with costs. In this connection the pronouncements given in the following cases are relevant:-

- i) Superintendent of Post Offices v/s P.K. Rajamma 1977 SLJ 532 (SC), AIR 1977 SC 1677.
- ii) Mohammad Abdul Rashid v/s Union of India and others (1987) 2 ATC 150 (Cuttack Bench)
- iii) N. Babu v/s Inspector RMS Trivandrum 1988(3) SLJ(CAT)565 (Madras Bench).
- iv) S. Serial Raj v/s Union of India and other (1988) 6 ATC 712 (Madras Bench)
- v) Surya Bhan Gupta v/s Union of India and others (1988) 7 ATC 226 (Allahabad Bench) ATR 1988(2) CAT 142.

LUCKNOW

*Hami*  
Deponent

Dated : 24.7.90

VERIFICATION

I, the abovenamed deponent do hereby verify that the contents of paras 1 to 25 and 27 & 28 are true to my knowledge and those of paras 26 and 29 are believed to be true.

*Hami*  
Nothing material has been suppressed and no part of it is false. So help me God.

LUCKNOW

*Hami*  
Deponent

Dated : 24.7.90

I identify the deponent who has :-

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ASB

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH  
LUCKNOW

MP No. 42 of 1991 (2, 4)

In re -

DA No. 175 of 1990(L)

Hari Prakash Misra, aged about 33 years, s/o Shri Devi  
Gulam Misra, r/o Village & P.O. Lawani Kalan, District  
Unnao.

.... Applicant

Versus

1. Union of India, through the Secretary to the Govern-  
ment, Ministry of Communication, Department Post,  
New Delhi.
2. Director Postal Services, Kanpur Region, Kanpur.
3. Superintendent of Post Offices, Kanpur Muffassil  
Division, Kanpur.
4. Shri B.L. Kureel, Sub Divisional Inspector, ~~XXXXXX~~  
~~XXXXXX~~ of Post Offices, Shafipur, Unnao.

.... Respondents

- - - - -

The humble applicant respectfully states as  
under :-

1. That the applicant had filed DA No. 175 of 1990(L)  
before this Hon'ble Tribunal seeking to quash the impugned  
termination order dated 2.5.90 besides granting other reliefs.
2. That the Hon'ble Tribunal after hearing the case,  
directed by order dated 15.8.90 a photo copy of which is  
Annexure-1 that the applicant should first approach the  
reviewing authority before seeking remedy from the Tribunal,  
and the Reviewing Authority should go into all the aspects  
of the matter, particularly those referred to in the order,  
give the applicant an opportunity of being heard and pass a  
speaking order. The reviewing authority was also required  
to hear Rsm Krishna Rathore before disposing of the review  
application. The applicant was required to make his  
application for review within 15 days from the date of receipt  
of the order and the Reviewing Authority was to treat it

*Filed today  
30/1/91*

*Misra*

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as having been filed in time, consider the same in the light of the observations made by the Tribunal and intimate the decision to the applicant within one month thereafter. If the decision went against the applicant, he was at liberty to approach this Hon'ble Tribunal.

3. That a copy of the Tribunal's order dated 16.8.90 was received by the applicant on 17.8.90 and he in compliance to the order made an application for review to the Director Postal Services, Kanpur Region, Kanpur through the Superintendent of Post Offices Kanpur Muffasil Division, Kanpur on 24.8.90 and a copy of the application was also delivered in the office of PMG Kanpur, where the Director of Post Offices holds his office. A photo copy of the review application is Annexure-2.

4. That having received no order/reply from the Director Postal Services, Kanpur, within one month as stipulated in the order dated 16.8.90 passed by the Tribunal (Annexure-1) the applicant sent a notice dated 3.12.90 to the Director Postal Services, Kanpur, and Superintendent of Post Offices, Kanpur, Muffasil stating that if he did not receive a favourable order within 10 days, he would be constrained to knock the door of justice for removal of his grievances and also to initiate proceedings of civil contempt against both of them at their cost and responsibility. The notice was served on the DPS Kanpur Region on 5.12.90 and on the Supdt. of Post Offices, Kanpur Muffasil on 6.12.90. A photo copy of the notice is Annexure-3.

5. That the Reviewing Authority viz. Director Postal Services, Kanpur Region, Kanpur, <sup>has not passed any order in terms of directions</sup> given by this Hon'ble Tribunal vide order dated 16.8.90 after submission of review application on 24.8.90 and issue of notice dated 3.12.90 and more than 4 1/2 months have already passed, the applicant is much aggrieved and has no alternative except to approach

27.11.90

Agg

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- 3 -

this Hon'ble Tribunal again and file this Misc. Petition for consideration of his case and removing the grievance of the applicant.

6. That Shri Ram Krishna Rathore was never appointed as ED BPM Lawani Kalan and so there was/is no question to implead him as a party in the case. After the termination of the applicant, the charge of ED BPM Lawani Kalan was held for sometime by the Postal Overseer who received the charge from the applicant's brother ~~xxxxxxxx~~ on 15.5.90 and then it was entrusted to the EDDA Shri Hari Kishore Misra on 22.5.90 in addition to his own duty. Shri Ram Krishna Rathore was later engaged to work as EDDA by the Sub Divisional Inspector, respondent no. 4 but he has already been removed on a complaint as he is an elected Up Pradhan of the Gram Sabha and he cannot be appointed to any post of the Post Office under the rules.

7. That the order dated 2.5.90 terminating the services of the applicant, annexure 10 to the application is arbitrary, prejudicial, malicious, illegal, and inoperative and liable to be quashed and the applicant deemed to be continuing in service on 15.5.90 and thereafter with all consequential benefits including pay and allowances.

8. It is, therefore, most respectfully prayed :-

- a) That the impugned order dated 2.5.90 (Annexure 10 to the application be declared as unjust, unwarranted and illegal and accordingly be quashed.
- b) That the applicant be deemed to be in service throughout on 15.5.90 and thereafter with benefits of pay and allowances as admissible and entitled to payment of arrears thereof.
- c) That the applicant be allowed costs against the respondents.

Sh. Misra

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d) That any other relief deemed just and proper  
in the circumstances of the case be allowed,  
in favour of the applicant.

LUCKNOW

Hari Prakash Mishra  
Applicant

Dated : 11.1.91

VERIFICATION

I, the above named applicant do hereby verify  
that the contents of paras 1 to 6 are true to my knowledge  
and those of paras 7 & 8 are believed to be true. Nothing  
material has been supposed and no part of it is false.

Signed and verified this            the day of January,  
1991 at Lucknow.

Hari Prakash Mishra  
Applicant

LUCKNOW

Dated : 11.1.91

Before C.A.T., Circuit Bench, Lucknow  
Miscellaneous Petition in  
Hari Prakash Mishra Vs. U.O. 9 and others  
Annexure-1  
1990 (J.A. 175 of 1990)

CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH

LUCKNOW

Original Application No. 175 of 1990 (L)

Date: 16-8-1990

Hari Prakash Mishra ... Applicant

Vs.

Union of India & Others ... Opp. Parties

Hon'ble Mr. P. Srinivasan, AM

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

J U D G M E N T

(Delivered by Hon'ble Mr. P. Srinivasan)

The applicant was appointed as <sup>Extra</sup> Departmental Branch Postmaster (EDBPM), Lawani Kalan, District Unnao, by an order dated 1-11-1989 passed by the Superintendent of Post Offices (SPO), Kanpur (M), Division. But within about 6 months thereafter, the same SPO passed another order on 2/7-5-1990, terminating the services of the applicant under Rule 6 of the P & T SDA (C & S) Rules, 1964 with immediate effect. Aggrieved with this last mentioned order, the applicant has filed this application.

2. Shri M. Dubey, learned counsel for the applicant and Dr. Dinesh Chandra for the respondents have been heard. The respondents have also filed a reply resisting the application. Though allegations have been made in the application that respondent no. 3 named therein was interested in another person and had therefore manoeuvred the termination of the applicant's services, the said respondent no. 3 has not filed a separate reply, but respondent no. 2 who has filed reply on behalf of all the three respondents has sought



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to deny the allegations against respondent no. 3, particularly the allegation that respondent no. 3 had played a role in the impugned order terminating the applicant's services.

3. The facts of the case are as follows: after two unsuccessful attempts to fill up the post of EDBPM, Lawani Kalan, Unnao, an advertisement calling for applications was issued on 24-2-1989. Nine candidates, including the applicant applied in response thereto and "after making the necessary enquiry" (see para 4 of the respondents' reply) the applicant was appointed to the post by order dated 1-11-1989<sup>H</sup> which narrated, inter-alia that the appointment "shall be in the nature of a contract liable to be terminated by him or by the undersigned by notifying the other<sup>H</sup> in writing .....". The applicant states - and the respondents do not deny - that respondent no. 3 had inspected the applicant's cloth shop and had reported that the cloth lying there did not belong to the applicant and that the shop premises were not suitable to house the post office; that the Pradhan<sup>-S</sup> of the applicant's village and of the other villages served by the Lawani Kalan Branch Post Office wrote to the authorities that the report of respondent no. 3 was not right and that the applicant was the most suitable person for appointment as EDBPM while two others, viz. Rama Krishna Rathore and Raghunath Prasad were not suitable; whereupon another official Shri G.P. Dwivedi, was deputed to make enquiry and he reported in the applicant's favour resulting in the appointment of the applicant on 1-11-1989; that thereafter Ram Krishan Rathore had made allegations against the applicant which

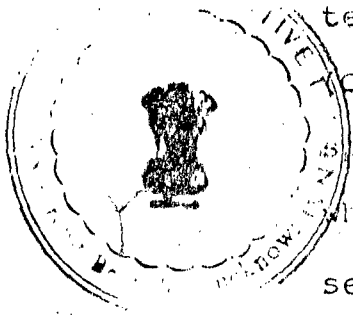


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were inquired into by Shri K.K. Nigam and found to be untrue. In short, it is admitted by the respondents that the applicant's initial appointment was made after following a proper process of selection and after making proper inquiry into the allegation by Ram Krishna Rathore that the applicant was not suitable for the post <sup>by which</sup> had been found to be untrue.

4. In the above circumstances why were the applicant's services terminated? The respondents say that the selection and appointment which was made by the SPO was subject to review by the Director of Postal Services (DPS). On such a review, the DPS, Kanpur, found that while selecting the applicant, "the appointing authority had ignored the candidate (sic) of more suitable candidates for the said post". Therefore the services of the applicant were terminated. Rule 6 of the Extra Departmental Agents (Conduct & Service) Rules, 1964, (the Rules for short) specifically provided that the service of an employee who had not rendered more than three years' continuous service was liable to termination by the appointing authority at any time without notice. The letter appointing the applicant had also stated that his appointment was in the nature of a contract which could be terminated by either side without assigning any reason. Learned counsel for the respondents therefore submitted that it was in exercise of the power vested in him by Rule 6 of the Rules, that the SPO terminated the services of the applicant who had not put in continuous service of three years by then.

5. Normally we would have no hesitation in upholding an order passed in pursuance of Rule 6 of the



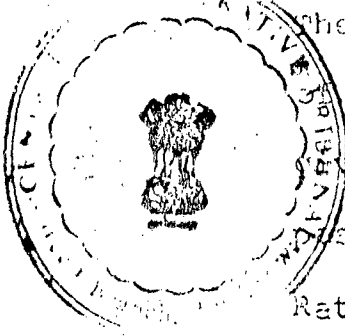
Rules purporting to terminate the services of an Extra Departmental Agent who had not put in 3 years of continuous service. But in this case when the appointment was made after a proper selection to a vacant post and <sup>after</sup> <sup>M</sup> complaints against the suitability of the applicant were specifically enquired into and found to be untrue, it is somewhat strange that the DPS should come to the conclusion that more suitable candidates had been ignored while selecting the applicant; it is all the more so when the respondents themselves say that on two earlier occasions suitable candidates were not forthcoming to fill the post. It is admitted that the applicant's services were not terminated due to complaints received against him.

Though the power to terminate the services of an EDA without assigning reasons is given to the appointing authority where the employee has not put in three years of continuous service, that power is meant to be exercised when the appointee is found to be unsuitable for continuance in service or for any other administrative reason. In this case, allegations against the applicant's suitability were enquired into and found to be untrue. It was admitted by learned counsel for the respondents that the DPS did not name any particular candidate or candidates who were more suitable and had been ignored; that being so, the question arises <sup>it is to whether</sup> ~~what~~ for the conclusion was drawn by him on the basis of any evidence before him or was an arbitrary decision.

6. Having said so much, we must notice one more fact. The respondents say that Ram Krishan Rathore - one of the persons who applied for the post and were not selected, when the applicant was selected

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and who complained unsuccessfully against the applicant's appointment - has been appointed in his (applicants) place and that he should have been impleaded as a respondent, but has not been so impleaded. While Rathore's appointment in the background of the facts set out earlier itself raises more questions, we would not like to decide the matter in his absence so as to affect his interest adversely. Moreover, the respondents point out that the applicant has a departmental remedy of review available to him under Rule 16 of the Rules. We feel that the applicant should first approach the reviewing authority before seeking remedy from this Tribunal.



The Reviewing authority should go into all the aspects of the matter, particularly, those referred to above, give the applicant an opportunity of being heard and pass a speaking order. He will also hear Ram Krishan Rathore before disposing of the review application. The applicant will make his application for review within fifteen days from the date of receipt of this order. The reviewing authority will treat it as having been filed in time, consider the same as directed by us above and intimate his decision to the applicant within one month thereafter. If the decision goes against him, the applicant will be at liberty to approach this Tribunal.

7. The application is disposed of on the above terms leaving the parties to bear their own costs.

Attested  
true copy  
M. D. Jha  
Secretary

MEMBER (J) *[Signature]* MEMBER (A) *[Signature]*  
ES/ C.T.C. Central Board of Secondary Education  
New Delhi  
12/12/2012

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Annexure 2

To :

The Director Postal Services  
Kanpur Region  
KANPUR

Through :

The Superintendent of Post Offices  
Kanpur Muffasil Division  
KANPUR

Respected Sir,

The humble petitioner respectfully states  
as under :-

1. That the Superintendent of Post Offices invited applications for regular appointment against the post of EO BPM Lawani Kalan District Unnao on 24.2.1989 fixin the last date of submission of application to be 23.3.1989 and in response thereto the petitioner submitted his application for the said post.
2. That while the enquiry was going on about the fitness and suitability of the candidates for the post the SDI Safipur Unnao, Shri B.L. Kureel who was interested in appointment of Shri Ram Krishna Rathaur for extra-neous considerations, came to inspect the room and shop of cloth run by the peti-tioner and it was wrongly said by him that the cloths did not belong to the petitioner and the shop was not in proper form to run the Post Office. On coming to know this, the Gram Pradhan Shri Durga Prasad Tiwari sent a complaint to the Supdt. of Post Offices Kanpur Muffasil stating therein that the SDI Shafipur was not acting fairly and that the petitioner had been running a cloth shop for the last 7 years and was having adequate space to run the Post Office. A true copy of the complaint dated 8.9.1989 by the Gram Pradhan is annexed as Annexure No. 1.
3. That thereafter a joint representation dated 16.10.1989 was submitted by seven Gram Pradhans who were concerned with the Post Office at Lawani Kalan, to the Supdt. of Post Offices, Kanpur (M) recommending the appointment of the petitioner as Branch Postmaster and sta-ting that he was an honest person. A true copy of the said representation is Annexure no. 2 to this petition.
4. That the Pradhan, Gram Sabha Lawani Kalan also stated that S/s Ram Krishna Rathaur and Raghunath

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Prasad who were also in the run for appointment as BPM Lawani Kalan, were having loan in their names from the Bank, were not honest persons and were not fit to be appointed to the post. A true copy of the representation dated 20.8.89, in this regard is Annexure no. 3.

5. That it will be relevant to state that Shri Ram Krishna Rathaur had given a false certificate of being handicapped to enable him to get the appointment, but various Pradhans of Gram Sabhas gave in writing that he was a man of bad character and while he was operating Katta, his two fingers were injured and he was not handicapped and also that his activities were not congenial to the Society and his appointment on the post was not safe. A true copy of such representation dated 15.2.89 is annexed as Annexure no. 4.

6. That on the complaint/representation of the Gram Pradhans that the SDI Shafipur Unnao was not acting fairly, the matter was enquired into by Shri G.P. DuAvedi at the instance of Supdt. of Post Offices, Kanpur (MR, who after enquiry on 7.10.89 found the version of the petitioner to be correct that he was running a Cloth shop for the last seven years, having ample cloths in his shop and that he had proper room to accommodate and run the Post Office. He submitted his report in favour of the petitioner.

7. That the petitioner was appointed as ED BPM Lawani Kalan after thorough enquiries and having been found to be the best amongst the intending candidates numbering as many as nine and more suitable than any of them, by the competent authority, Supdt. of Post Offices, Kanpur (MR) Division, Kanpur, who appointed him as ED BPM Lawani Kalan, Bistt. Unnao, vide his order dated 1.11.89, a true copy of which is annexed as Annexure no. 5. The petitioner took over charge on 3.11.89 and started working from 4.11.89.

8. That the petitioner had been working satisfactorily without any complaint or adverse comment regarding his work and behaviour except the opposition of Shri Ram Krishna Rathaur and Shri Raghunath Prasad Bajpai who were not selected for appointment as BPM and for reason of that harboured grudge and malice.

against the petitioner and tried to malign his position in their personal interest. They were backed and supported by the SDI Shafipur, Shri B.L. Kureel for extraneous considerations and ulterior motives. The petitioner came to know that after his appointment, Shri Ram Krishna Rathaur moved application against the petitioner that he had no power and cloth shop. This complaint was enquired into by Shri K.K. Nigam, who also inspected the Shop and took the statement of the petitioner, on 16.1.90, a copy of which is Annexure no. A-6.

9. That Shri Ram Krishna Rathaur continued to harass the petitioner and make attempts to oust him from his post. He went to the extent of fabricating a false certificate against the petitioner by moving an application to the SDM for obtaining income certificate and property certificate and after obtaining the same, he filed it with an application. On this application enquiry was made by Shri V.S. Bajpai on 24.3.90 and it was found that the application neither contained the signature of the petitioner, nor application for property/income certificate was moved by him. It was reported by the Enquiry Officer to the Sr. Post Offices (M) Kanpur that the allegation made in the complaint moved by Shri Ram Krishna Rathaur were false and baseless.

10. It will be pertinent to note that earlier a post office was being run in the room of Shri Ram Krishna Rathaur and when the petitioner was appointed as BPM he (Shri Rathaur) was asked to hand over the charge of all accessories of the Post Office but he did not do so, and the petitioner on the instructions of the Overseer had to lodge a complaint against him with the Police Station on 7.1.90 and also sent an application to the SDI on 29.1.90, true copies of which are annexed as Annexures no. 7 & 8 respectively. True copy of the instructions given by the S.D. and Overseer on 2-11-89 and 22-12-89 are Annexure A & B and A & B respectively. That the petitioner had already issued an income certificate on 13.1.89 by the Tahsildar Shafipur Distt. Unnao showing his income to be Rs. 6000/- yearly. A true copy of this certificate is Annexure no. 2.

12. That all of a sudden, the services of the petitioner were terminated abruptly by the Supdt. of Post Offices, Kanpur (M) Division, vide order dated 2/7.5.90 in the purported exercise of his power under Rule 6 of P&T

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EDA (Service & Conduct) Rules 1964, a true copy of which is Annexure no. 10.

13. That the petitioner was appointed as ED BPM Lawaji Kalan after due observance of necessary formalities and selection as required under the rules, against a vacant post. The petitioner after appointment acquired an interest to the post, which could not be divested without a show cause notice and affording reasonable opportunity of hearing. Although Rule 6 of the EDA (Conduct & Service) Rules 1964 lays down that :

"The service of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice", but this provision does not give arbitrary and unfettered power to the appointing authority to dislodge an employee anytime at his sweet-will without any basis or justification. It has been held by the Supreme Court of India by judgement delivered on 22.4.1977 in Civil Appeals preferred by the State that ED AGENTS are holders of Civil posts within the meaning of Article 311(2) of the Constitution and under the provision of this Article no person who is a member of a civil service shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Although the order of termination (Annexure no. 10) is simplicitor but in fact it seeks to remove the petitioner and divest him of his post which still exists. It has also been held by the Supreme Court of India in an appeal case, Dr. Mrs. Sumiti P Share Versus Union of India and others reported in 1 (1989) ATLT (SC) 652 that, "the employee should be made aware of the defect in his work and deficiency in his performance defects, deficiency, indifference or indolence may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of un-suitability. Further held that all we wish to state is that if she is to be discontinued, it is proper and necessary that she should be told



her work and performance is not upto the mark". With these observation the appeal was allowed. It was also observed that in the relationship of master and servant there is moral obligation to act fairly. It may be stated that Dr. Mrs. Sumiti was an adhoc employee and the period of adhoc appointment was extended from time to time. The petitioner is a regularly appointed person against a clear/vacant post after observing all the formalities required under the rules, his work has been satisfactory without any complaint or adverse comments and in view of these facts, his services cannot be terminated without notice and opportunity of hearing.

14. That being aggrieved by the termination order dated 2/7.5.90 (Annexure 10), the petitioner preferred an application before the C.A.T., Circuit Bench, Lucknow, which after exchange of counter and rejoinder affidavit, came up for final hearing on 13.8.90 and the Hon'ble Tribunal after hearing the parties did not pass order on merit and desired that the petitioner should first approach the reviewing authority before seeking remedy from the Tribunal, with direction that the Reviewing Authority should go into all the aspects of the matter, particularly, those referred to by the Tribunal, give the petitioner an opportunity of being heard and pass a speaking order. He will also hear Shri Ram Krishna Rathaur before disposing of the review application. The petitioner is required to make his application for review within 15 days from the date of receipt of the order and the reviewing authority to intimate his decision to the petitioner within one month thereafter. The copy of the order was received by the petitioner on 17.8.90 and accordingly this application for review of order dated 2/7.5.90 (Annexure 10) is submitted. A photo copy of the Tribunal's order dated 16.8.90 is Annexure A-11.

15. That this review application is made on the facts and circumstances stated in paras 1 to 14 above and on the following amongst others.

#### G R O U N D S

1) Because the petitioner was appointed after due observance of formality and after proper enquiry and having been found to be the best candidate out of 9 contestants by the appropriate appointing authority against a clear/vacant post to which the

petitioner acquired a legitimate claim and he cannot be diverted of his right and ousted from the post in an arbitrary manner without notice and reasonable opportunity.

ii) Because Shri Ram Krishna Rathaur was not considered fit for the post by the appointing authority and his candidature was seriously disputed by the Pradhans of concerning villages and his complaints against the petitioner were proved to be untrue.

iii) Because the averment made by the respondents in para 6 of the counter to the application for interim relief and also in para 24 of the counter affidavit to the main application that Shri Ram Krishna Rathaur was appointed in place of the petitioner and he assumed charge on 11.5.90 is false, prejudicial and malicious. The petitioner on receipt of the termination order abruptly on 11.5.90 felt nervous and having developed nervousness and illness proceeded for proper treatment handing over charge of the Post Office to his younger brother, who performed his duty upto 15.5.90, closed and sent the Postal Dak to the Sub Office. The Overseer Shri Shankar Dayal Sharma received the Dak on 15.5.90 and worked upto 27.5.90 as ED BPM Lawani Kala-n at Fatehpur Chaurasi and thereafter Shri Hari Kishore Misra, the EDDA was entrusted with the work of ED BPM and Shri Ram Krishan Rathaur was engaged as EDDA by the SDI Shri B.L.Kureel. His engagement of EDDA has since been discontinued on some complaint.

*It may be stated that a parallel post office was opened in the case of petitioners while no such objection was taken in the case of Jyeshad*

iv) Because Shri Ram Krishna Rathaur apart from being a tough and undesirable person, <sup>S.P.M. Surbani Ummah</sup> as stated/reported by the Gram Pradhan, is also Up Pradhan of the village and in view of these matters and the previous complaints of the Gram Pradhans, he cannot be considered and appointed to a post of the Post Office of public utility.

v) Because Rule 6 can be invoked under certain circumstances specified by the DG P&T in consequence of abolition of post, medical ground and unsatisfactory service and not otherwise. The order of termination is biased, prejudicial, arbitrary, illegal and void.

vi) Because the Supdt. of Post Offices as competent appointing authority having once adjudged the petitioner as most suitable candidate for the post after considering all pros and cons cannot change his opinion and take a contrary view.

vii) Because the order of termination is bad both on facts and law.

viii) Because appointment once made cannot be cancelled without opportunity to show cause, on the ground that some other applicants were not duly considered, as held in Surya Bhan Gupta Versus Union of India & Others (1988) 7 ATC 226 (Allahabad Bench) and ATR 1988(2) CAT 142. Further, the appointment cannot be cancelled on the basis of a complaint without notice to the affected as held in S. Serial Raj Versus Union of India & Others (1988) 6 ATC 712 (Madras Bench). True copies of these judgements are Annexure 12.

ix) Because in a recent case OA No. 6 of 1990(L) Dinesh Kumar Yadva Versus Union of India & others, it has been held that the services of a regularly appointed person cannot be terminated without show cause and opportunity of hearing. A true copy of this decision is Annexure A-13.

In the circumstances, it is most respectfully prayed that the case of the petitioner be given sympathetic consideration, the order of termination be quashed and the petitioner be ~~gkx~~ ordered to resume his duty as ED BPM Lawani Kalan, Distt. Unnao forthwith with all consequential benefits.

The petitioner shall ever remain grateful for favour of your prompt judicious orders.

*Hami*  
(Hari Prakash Misra)  
Petitioner  
V&PO Lawani Kalan  
Distt. UNNAO

Dated : 08.90

*M. Duley*  
*Adv*

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Annexure 3

NOTICE REGISTERED A.D.

From :

Shri Hari Prakash Misra, Terminated ED 9PM  
Lawani Kalan,  
Distt. UNNAO

Thru' :

M. Dubey, Advocate, 4th Lane, Nawaiya  
Ganeshganj, Lucknow - 226 018 (Phone 245021)

To :

- 1) The Director Postal Services  
Kanpur Region  
KANPUR
- 2) The Superintendent of Post Offices  
Kanpur Maffasil Division  
KANPUR

Dear Sir

Under instructions of my client Shri Hari Prakash Misra, above named, I have to state as under :

1. That my aforesaid client was appointed as ED 9PM Lawani Kalan, Distt. Unnao, on a regular basis, after observing all formalities and enquiries, by the addressee no. 2 by his order dated 1.11.89.
2. That the services of my client, were terminated abruptly without any notice or opportunity of hearing, by the addressee no. 2 at the instance of the addressee no. 1, vide his order dated 2/7.5.1990.
3. That my client, having been aggrieved, by the order dated 2/7.5.1990 seeking to terminate his services as aforesaid, filed an application before the Central Administrative Tribunal, Circuit Bench, Lucknow, which was registered as C.A.No. 175 of 1990 (L).
4. That after exchange of counter/W.S. and rejoinder, the application came up for final hearing on 13.8.90 and the Hon'ble Tribunal without going into the merit of the case, desired by order dated 16.8.90 that my said client should first approach the reviewing authority before seeking remedy from the Tribunal, with direction that the reviewing authority should go into all the aspects of the matter, particularly those referred to by the Tribunal, give the petitioner an opportunity of being heard and pass a speaking order within one month after the submission of the review application which was to be made within 15 days.
5. That a Review application was submitted to the addressee no. 1 through the addressee no. 2, i.e. through proper channel, which was received in the office of the addressee no. 2 on 24.8.90 and a copy of the same intended for addressee no. 1 was also received in the office of Post Master General, Kanpur on 24.8.1990.
6. That the addressees no. 1 & 2 were under an obligation to pass a speaking order within one month of the receipt of the Review application in terms of the Tribunal's orders. The review application was filed on 24.8.90 and a speaking order was required to be passed and communicated to my client by 23.9.90. Apparently, the orders of the Tribunal have been flouted and dis-obeyed, as no order has been conveyed to my client.

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(N. 222 70 10/10/01)

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7. That before going to the Tribunal again my client has asked me to request you to pass immediate orders redressing his grievance and in case he does not get a favourable order within 10 days, he shall be constrained to knock the door of justice for removal of his grievance and also to initiate proceedings of Civil contempt against both of you by name and for that the responsibility for costs and damages shall be entirely yours.

Yours faithfully

*(M. Dubey)*  
Advocate

Dated : 3-12-90

*Attested  
True copy  
M. Dubey  
paw*

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,  
LUCKNOW

Misc. Application No. 370 of 1990 (L)

in re:

O.A. No. 175 of 1990 (L)

Hari Prakash Misra ... .. Applicant

Versus

Union of India and others ... .. Respondents

Fixed for 31.7.1990

APPLICATION FOR INTERIM RELIEF

The humble applicant respectfully states as under:-

1. That the applicant preferred the above noted application before this Hon'ble Tribunal stating that he was regularly appointed as Extra-departmental Branch Postmaster (E.D. BPM) Lawani Kalan, District Unnao by the competent authority vide order dated 1.11.89 (Annexure-5) and in consequence of the same, he took over charge as E.D. BPM Lawani Kalan on 4.11.89.
2. That the applicant was appointed to the said post after observing all formalities on a regular basis and he acquired an interest to the post. The applicant worked as E.D. BPM Lawani Kalan satisfactorily and without any complaint whatsoever till his services were ordered to be terminated by order dated 2/7.5.90 (Annexure-10).
3. That the order terminating the services of the applicant is arbitrary, malicious, prejudicial and baseless. It

contd....2

Filed today  
Sep  
28/5/90

Hon'ble

Noted by  
5-6-90  
M. Duly  
12/6/90

Noted by  
5-6-90  
M. Duly  
12/6/90

does not specify any reason for terminating the applicant's services, while the applicant has been working satisfactorily and the post still exists.

Although Rule 6 of the E.D.A. (Conduct & Service) Rules 1964 does not provide any notice before terminating the service of an E.D. employee who has not already rendered more than three years continuous service from the date of his appointment, but this power cannot be exercised by the appointing authority arbitrarily, capriciously and prejudicially as no absolute or arbitrary power has been given to any authority under the Constitution of India.

4. That the applicant has not yet been relieved and still holds the charge of the E.D. BPM Lwani Kalan, District Unnao and the respondents have not yet made any appointment in his place. To harass the applicant, the respondents have stopped sending postal articles to Lawani Kalan Post Office and have started the distribution of postal articles from transit office Fatehpur Chaurasi (under Shufipur Post Office) which is not in public interest and is to the great inconvenience and annoyance to the public at large.

5. (a) That the applicant understands that in an identical case the order of termination was stayed by this Hon'ble Tribunal in the following case:

- (i) O.A. No. 296 of 1989 (L) Singhraj Singh versus Union of India and others by order dated 24.10.1989, a true copy of which is Annexure 11.

(b) The Tribunal also quashed the order of termination in the following cases in which resort to Rule 6 of the EDA (Conduct & Service) Rules was taken by the competent authority:

(i) O.A. No. 6 of 1990(L) Dinesh Prasad Yadav versus Union of India & Others in which the order of termination was quashed by order dated 29.1.90. A true copy of this order dated 29.1.90 is Annexure -12.

(ii) O.A. No. 15 of 1990(L), Nirdosh Kumar Srivastava versus Union of India and others, in which the order of termination was quashed by order dated 29.1.90. A true copy of this order dated 29.1.90 is Annexure - 13.

6. That the applicant has been subjected to humiliation and injury and is suffering an irreparable loss and it would be expedient in the interest of justice that the ~~termination~~ <sup>suspension</sup> order dated 2/7.5.90 is stayed during the pendency of the case and the respondents are directed not to interfere with his duty as E.D. BPM, Lalwani Kalan, District Unnao in any manner.

It is, therefore, most respectfully prayed that this Hon'ble Tribunal be pleased to stay the operation of ~~termina-~~ <sup>suspension</sup> order dated 2/7.5.90 contained in Annexure-10 and restrain the respondents to interfere with his duty as E.D. BPM, Lalwani Kalan, District Unnao.

Lucknow :

Dated

28-5-90 M. Dubeey  
Hawt

APPLICANT



(A85) 178

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,  
LUCKNOW  
O.A. No. 175 of 1990  
Hari Prakash Misra versus Union of India & Others

Annexure - A-11

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH LUCKNOW

O.A. NO.296 of 1989 (L)

Singh raj Singh ..... Applicant.

Versus

Union of India & others ..... Respondents.

24-10-1989

Hon'ble Justice K. Nath, J.C.

Admit.

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

In the matter of interim relief issue notice and list for orders on 7-11-1989. Till then the operation of the impugned order dated 12-10-1989 contained in Annexure-6 shall remain stayed unless in the meantime some other person has already been appointed and is working as Extra Departmental Branch Post master, Sehrazwan, Distt. Gonda in place of the applicant. A copy of the order may be given to the learned counsel for the applicant within 24 hours.

Dr. Dinesh Chandra takes notice of the application on behalf of all the opposite parties. The office will deliver copies to him meant for the opposite parties.

Sd/-

V.C.

// True Copy //

ram/

Y. Chandra

H. Ann

M. D. Misra  
True copy  
M. D. Misra  
ram/

28/5/90

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,  
LUCKNOW  
O.A. No. 175 of 1990  
Hari Prakash Misra versus Union of India & Others

Annexure A-12

Court No. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.  
CIRCUIT BENCH AT LUCKNOW.

\*\*\*\*\*

Registration (O.A.) No. 6 of 1990 (L)

Dinesh Prasad Yadava .... Applicant.

Versus

Union of India & others .... Respondents.

\*\*\*\*\*

Hon'ble Justice K. Nath, V.C.  
Hon'ble K.J. Raman, A.M.

This application, under Section 19 of the Administrative Tribunals Act, 1985, is for quashing the order dated 21.12.1989 (Annexure '2') whereby the applicant's services as ED BPM, Paharpur Maheshpur, were terminated with immediate effect.

2. By the order dated 7.9.1988 (Annexure '1') the applicant was appointed as ED BPM after selection on certain candidates being sponsored by the Employment Exchange. The recital in para 2 of the counter affidavit indicates that the file of appointment was called for by the Director of Postal Services, Lucknow Region, Lucknow on 10.11.1989 and it was found that Shakti Ali, one of the candidates, was more deserving than the applicant, Dinesh Prasad Yadava, because the former had achieved 42.8% marks against the latter's only 40.16% marks in the High School examination. It is stated that other qualifications were equal. It is on this basis that the appointment of the applicant was ordered to be cancelled and in compliance thereof the Superintendent of Post Offices passed the impugned order (Annexure '2') terminating the services, probably under Rule 6 of the Post & Telegraphs Extra-Departmental Agents (Conduct & Service) Rules, 1964.

Annexure

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3. It is, however, admitted that no opportunity was given to the applicant before terminating his services. In view of the fact that the applicant had, admittedly, joined the post of ED SPM in consequence of the appointment order dated 7.9.1988, he had acquired enough interest in the appointment to entitle him to a show-cause notice before his services could be terminated only on the ground that some other person was more suitable in view of the latter's higher marks in the High School examination. It is noticeable that there is no allegation of any act of default by the applicant in the course of his employment. What is considered to be inappropriate <sup>not</sup> ~~in~~ <sup>of</sup> ~~consist~~ precedent academic history. Out attention has <sup>not</sup> been invited to any provision in the Rules that for the purpose of judging suitability, the marks obtained academically are the determinative factors. The power to terminate services without reasons or without an opportunity have to be exercised in a fair manner and where such termination is not on account of unsuitability for the post, an opportunity cannot be done away with. There is <sup>a</sup> ~~the~~ distinction between suitability for holding a post and suitability for selection to the post. We are of the opinion that fairness and justice demand that before the applicant's services could be terminated, an opportunity to show-cause should have been given to him.

4. In view of above, the petition is allowed. The impugned termination order dated 21.12.1989 (Annexure '2' to this petition) is quashed. The applicant shall be reinstated with effect from the date he reports for duty. It will be open to the competent authority to examine the

*[Handwritten signature]*

~~ADD~~

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question of the applicant's appointment in accordance with law and rules, after giving an opportunity to the applicant to show-cause against the proposed action.

MEMBER (A).

VICE-CHAIRMAN.

Dated: January 29, 1990.

PG.

Attested

Recd. 1/29/90

General Manager,  
State of Bihar,  
Lucknow.

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True copy  
M. Duhey  
28/5/90

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,  
LUCKNOW

O.A. No. 175 of 1990  
Hari Prakash Misra versus Union of India & Others

Annexure A-13

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,  
CIRCUIT BENCH AT LUCKNOW.  
\*\*\*\*\*

Registration (O.A.) No. 15 of 1990 (L)

Nirdosh Kumar Srivastava ..... Applicant.  
Versus  
Union of India & others ..... Respondents.  
\*\*\*\*\*

Hon'ble Justice K. Nath, V.C.  
Hon'ble K.J. Ramiah, A.M.

This application, under Section 19 of the Administrative Tribunals Act, 1985, is for quashing the order dated 4.1.1990 (Annexure 'A-5') by which the applicant's services as ED LHM, Sarva Jalalpur were terminated with immediate effect.

2. The applicant was appointed on 30.8.1988 by Annexure 'A-1' after the usual process of selection on being sponsored by the Employment Exchange. He joined the post on 13.9.1988. According to the counter affidavit, a complaint was lodged by one Bhagauti Singh to the Director of Postal Services, Lucknow Region, Lucknow and after investigation, into the complaint, the Director ordered on 22.12.1989 that the appointment of the applicant may be cancelled and Bhagauti Singh may be appointed instead. It is in pursuance of these directions that the impugned termination order dated 4.1.90 was passed.

3. It is admitted that before termination of the services of the applicant, no opportunity to show-cause was given to him. A similar matter came up before us today in O.A. No. 6 of 1990, Dineth Prasad Yadava v. Union of India & others. We have examined the question of necessity of giving an opportunity to show-cause. The views recorded by us in that case (O.A. No.6 of 1990)

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are <sup>equally</sup> applicable to the present case and, therefore, for reasons recorded therein we hold that the order of termination of the services of the applicant must be quashed.

4. The learned counsel for the parties indicate that the applicant, while holding the post, proceeded on leave and placed his substitute in his place and that his substitute is still working. It is not necessary to go into the legal aspects of the effect of termination on substitutes, but since admittedly Bhagauti Singh, who was required to be appointed, has not been appointed, there should be no difficulty in the applicant resuming his duties on the post of ED EPM in question.

5. In view of above, the petition is allowed and the impugned order of termination dated 4.1.1990, contained in Annexure 'A-5', is quashed. The applicant shall be allowed to work on the post in question with effect from the date he reports for duty. It will be, however, open to the respondents to re-examine the question in accordance with law and rules after giving an opportunity to the applicant, if they so desire.

MEMBER (A)

VICE-CHAIRMAN.

Dated: January 29, 1990.

PG.

Central Board of Secondary Education  
New Delhi

Handwritten signature

Attested  
True & Correct  
M. D. D. D.  
28/1/90

ब अदालत श्रीमान

CA T, Circuit Bench, Muzam

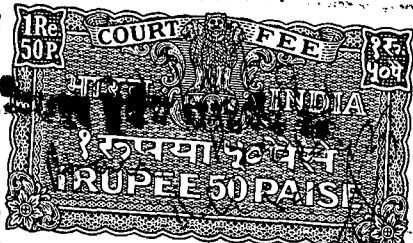
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[वादी] अपीलान्त

प्रतिवादी [रेस्पान्डेंट]

श्री Hari Prakash Mission

वकालतनामा



Hari Prakash Mission बनाम 409 प्रतिवादी (रेस्पान्डेंट)

मुकदमा नं० 67M 175 सन् 1990 पेशी की ता० १६ ई०

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

Court Muzam & M. Duley Adv. High Court Muzam  
Nawariga, Ganeshganj Muzam

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महोदय

एडवोकेट

नाम अदालत  
मुकदमा नं० नाम  
फरीकन

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 जवाबदेही 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 छपर 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 आवे।

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १९९० ई०