

50/100
**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 4111/2000

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SECTION OFFICER (Judl.)

*6/11/2000
22/12/18*

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI.5

ORIGINAL APPLICATION NO. 411/2000

Sri. Prabir Talukdar.....Applicant.

VERSUS

Union of India & Ors Respondents.

For the Applicant(s) Mr. S. Sarma,
" U. K. Goswami,

For the Respondents. C.G.S.C.

NOTES OF THE REGISTRY

This application is in form
but not in time Condonation
Petition is filed and vide
M.P. No. C.F.
for Rs. 30/- deposit made
IPO/SC No. 503942
Dated 20.11.2000

Dy. Registrar

All requirements are
filled.

1/11/00
24/11/00
803942 27/11/2000

Notice prepared and Sent to D/See.
for owing the deposit No 1 to 6
by Regd/AD and by hand. Date 01/11/00
Q983 W88 add 5/12/2000

29/11/00

DATE

ORDER

28.11.00 Present : The Hon'ble Mr Justice D.
N.Chowdhury, Vice-Chairman

Heard Mr S. Sarma, learned counsel
for the applicants.

Application is admitted. Issue
usual notice. Call for the records.

List on 1.1.2001 for written
statement and further orders.

Pendency of this application
shall not stand on the way of the
respondents to consider the case
of the applicant and also for
appointment.

Vice-Chairman

pg.

Date
28/11/00

1.1.2001

Put up on 27.1.2001 after
service.

27.1. No S. B. Adjudicated to

Vice-Chairman

Pls. 28.2.2001,

A/Regd.

27.1.

5.3.01

List on 11.4.01 to enable
the respondents to file written
statement.

Vice-Chairman

11.4.01

Written statement has been filed.

9.4.2001

The applicant may file rejoinder if any within 2 weeks. List on 23.5.01 for hearing.

W/S Submitted
by the Respondent.

Vice-Chairman

1m

18.5.01

On the prayer of Mrs. M. Hazarika, learned counsel for the applicant, the case is adjourned to 4.6.2001 for hearing.

I.C.Usha
Member

Vice-Chairman

bb

28.6.2001

Judgement reserved on 9.6.2001

Copy of the Judgement
has been sent to the
Dfsee. for issuing
the same to the Applicant
as well as to the Ld/s
for the Respondent.

SL

By order

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX. NO. 177 of 1999

With

O.A.No.411 of 2000

DATE OF DECISION 8.6.2001

O.A.No.177/99

Md. Mir Hussain Ali

O.A.No.411/2000

APPLICANT(S)

Shri Prabin Talukdar

Mrs M. Hazarika, Ms A. Ajit Saria

ADVOCATE FOR THE APPLICANT(S)

Mr. S. Sarma and Mr U.K. Goswami

-- VERSUS --

The Union of India and others

RESPONDENT(S)

Mr. A. Deb Roy, Sr. C.G.S.C.

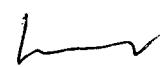
Mrs M. Hazarika and Ms A. Ajit Saria for
respondent No.6 in O.A.No.411/2000

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?
5. Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.177 of 1999
With

Original Application No.411 of 2000

Date of decision: This the 8/6 day of June 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

O.A.No.177/1999

Md. Mir Hussain Ali,
Resident of Chandrapur,
District- Kamrup, Assam,
Employed as E.D. Packer at
Chandrapur Sub-Post Office,
Kamrup.

.....Applicant

By Advocates Mrs M. Hazarika and Ms A. Ajit Saria.

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

O.A.No.411/2000

Shri Prabin Talukdar,
Village- Bagicha Gaon,
Panbari, Chandrapur,
Kamrup, Assam.

.....Applicant

By Advocates Mr S. Sarma and Mr U.K. Goswami.

- versus -

The Union of India and others

.....Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C.,
Mrs M. Hazarika and Ms A. Ajit Saria for respondent No.6.

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

Both the matters are interconnected and accordingly the two cases were heard together for disposal.

2. In O.A.No.177/99 the issue pertains to filling up of the post of Extra Departmental Packer (EDP for short) of Chandrapur Sub-Post Office. Consequent upon the promotion of the regular EDP, notices

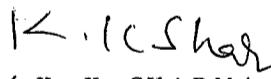
were issued inviting applications through the District Employment Exchange. The Employment Officer sponsored six candidates on 22.2.1999 along with their applications. Md. Mir Hussain Ali (hereinafter referred to as Ali) was selected and he was given charge by the SPM, Chandrapur on 4.3.1999 pending verification of particulars and testimonials. According to the respondents, on verification of the application of Ali, it was found that he did not belong to Chandrapur village and his selection was cancelled and orders were issued in supersession of the earlier order dated 24.2.1999 selecting Shri Prabin Talukdar (hereinafter referred to as Talukdar), the applicant in O.A.No.411/2000. Talukdar was given charge on 23.3.1999. Ali assailed the impugned action of the respondents in O.A.No.177/1999. The Tribunal by its order dated 3.6.1999 passed an interim order directing the respondents not to oust the applicant (Ali) from service. The SDI, East Sub-Division, issued struck off order dated 4.6.1999 and terminated both the selections. On receipt of the Tribunal's order dated 3.6.1999, Ali was reinstated. Talukdar assailed the impugned action of the respondents terminating his service vide order dated 4.6.1999 in O.A.No.409 of 1999. The Tribunal instead of entertaining the application directed Talukdar to prefer an appeal within the time prescribed and directed the respondents to consider and dispose of the said appeal as per law. By order dated 10.6.2000, the respondents rejected the appeal of Talukdar. Hence the present application of Talukdar in O.A.No.411/1999.

3. We have heard the learned counsel for the parties at length and also considered the materials on record. The respondents found suitable both the applicants. At the first instance the respondents appointed Ali, applicant in O.A.No.177/99, and had given the charge of the office. However, later on the respondents found that Ali did not belong to Chandrapur village and accordingly his appointment was cancelled. Admittedly, said cancellation of appointment order was passed without giving any opportunity to Ali. Talukdar was appointed in place of Ali in supersession of the order dated 24.2.1999 and he was given charge on 23.3.1999. The SDI (Postal), Guwahati East Sub-Division issued

off orders terminating both the selections, but, later on, reinstated Ali presumably on wrong consideration. Be that as it may, both the actions of the respondents cannot be sustained.

4. On an overall consideration of the matter we are of the opinion that ends of justice will be met if a direction is issued to consider the case of both Ali and Talukdar for appointment as EDP or any like post under the respondents as per law. As on today Ali is holding the post of EDP at Chandrapur Sub-Post Office. He should be allowed to hold the post till completion of the aforesaid exercise as per our direction. The respondents are ordered to take appropriate decision as per law for absorbing both Ali and Talukdar as EDP for Chandrapur Sub-Post Office or any other vacant post for being accommodated as EDP. The applicant Talukdar, who was also appointed as EDP at Chandrapur Sub-Post Office and by wrongly interpreting the order of this Tribunal cancelled his appointment and thereby made him unemployed. In the circumstances the respondents are directed to complete the aforesaid task of absorption of both the applicants at the earliest, at any rate within three months from the date of receipt of the order.

5. With the above direction the applications stand disposed of. There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

28/11
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case :

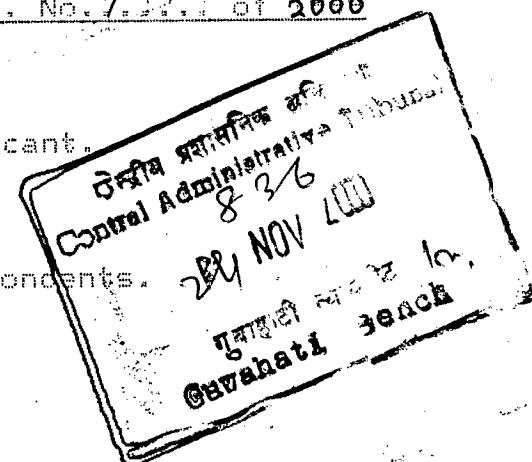
O.A. No. 411 of 2000

Between

Shri Prabin Talukdar, Applicant.

AND

Union of India & ors, Respondents.



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Filed by :

Regn. No. :

File : Prabin

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

केन्द्रीय प्रशासन अधिकारी बोर्ड
Central Administrative Board
24 NOV 2000
प्रत्यक्षी नामांकित
Guwahati, Sonch

Filed by
Siddhanta Jena
Advocate
24-11-2000

(An application under section 19 of the Central Administrative
Tribunal Act, 1985)

D.A. No. 411 of 2000

BETWEEN

Shri Prabin Talukdar
Vill, Bagicha Gaon,
Panbari, Chandrapur
Kamrup, Assam.

..... Applicant.

VERSUS

1. Union of India, represented by the
Secretary to the Govt of India.
Ministry of Communication.
New Delhi.
2. The Director General of Posts.
Sanshkar Bhawan,
New Delhi.
3. Chief Postmaster General:
Meghdoot Bhawan,
Guwahati, 781001.
Assam.
4. The Senior Supdt. of Post Offices.
Guwahati Division.
Guwahati.
5. The Sub Divisional Inspector (P)
Guwahati East Sub Division.
Guwahati.
6. Md. Mir Hussain Ali.
Son of Md. Sannur Ali,
ED Packer, Chandrapur Sub Post Office.
Guwahati.

..... Respondents.

PARTICULARS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS

MADE:

This application is made against the order vide No A-1/Chandrapur S.O./99 dated 4.6.99 issued by the Sub Divisional Inspector (Postal) Guwahati East Sub Division, by which the

24 NOV 2000

Guwahati Bench

service of the applicant has been terminated. This application is also directed against the action of the respondents in appointing the respondents No 6 who does not possess the required qualification for holding the said post of ED Packer. The applicant challenging the order of termination had approached the Hon'ble Tribunal by way of filing O.A. No which was disposed of with a direction to dispose of his appeal and the respondents by an order dated 10.1.2000 has rejected the case of the applicant. The applicant has also challenged the said order of the appellate authority dated 10.1.2000 through this application.

In a nutshell the applicant challenges the followings;

1. The order vide No A-1/ Chandrapur S.O./99 dated 4.6.99 issued by the Sun Divisional Inspector (Postal) Guwahati East Sub Division, terminating the service of the applicant.
2. The action of the respondents in appointing the respondents No 6 who does not possess the required qualification for holding the said post of ED Packer.
3. The order of the appellate authority dated 10.1.2000 rejecting the appeal dated 16.12.99 preferred by the applicant.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act, 1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicant is a citizen of India and as such he is entitled to all the rights, privileges and protections as guaranteed under the Constitution of India and laws framed there-

24 NOV 2000

পূর্ব পরামর্শ
Guwahati Bench

under.

4.2. That the applicant passed the HSLC Examination and registered his name in the local employment exchange. Thereafter the respondents have placed their requisition to the employment exchange for the vacant post of Extra Departmental Packer under Chandrapur Post Office. To that effect notifications have been issued by the Employment Exchange.

The applicant inspite of his best effort could not collect the copy of the said notification and list of sponsored candidates and hence prays before this Hon'ble Tribunal for a direction to the respondents for production of the aforesaid documents at the time of the hearing of this case.

4.3. That pursuant to said notifications a list was prepared by the local employment exchanged containing the name of the applicant and finally the applicant was offered with an appointment order vide office order No.A-1/Chandrapur S.O.799 dated 22.3.99 by which the applicant has been selected for the post of ED Packer in the Chandrapur S.O. It is pertinent to mention here that prior to issuance of the said order dated 22.3.99 another order was issued by the respondents on 24.2.99 by which one Md. Mir. Hussain Ali (Respondent No.6), has been appointed as ED Packer in the said Chandrapur S.O. In the said order dated 23.3.99 it is categorically mentioned that the same have been issued in super session of earlier order dated 24.2.99.

A copy of the order dated 22.3.99 is annexed herewith and marked as Annexure-1.

4.4. That the applicant immediately after receipt of the Annexure-1 order dated 23.3.99 joined his duty on the same date and taken charge of the post of ED Packer from one Shri Samiran Chakravorty who was holding the said post.

A copy of the said order dated 23.3.99 is

29 NOV 1999

Guwahati Annexure-2

Guwahati Annexure-2

annexed herewith and marked as Annexure-2.

4.5. That the applicant was working in the said Chandrapur S.O. from the date of his appointment order and has drawn his salary w.e.f. 23.3.99. The applicant has been working under the respondents to the satisfaction of all concerned and to the best of his ability without any blemish.

4.6. That suddenly another notification was issued by the respondents vide order No.A-1/Chandrapur S.O./99 dated 4.6.99 by the Sub Divisional Inspector (Postal) Guwahati East S.Division by which the service of the applicant has been terminated with immediate effect without any notice. It is pertinent to mention here that in the said order of termination along with the applicant, the services of Md.Mir Hussain Ali also been terminated.

A copy of the order dated 4.6.99 is annexed herewith and marked as Annexure-3.

4.7. That the applicant was working as ED Packer w.e.f 23.3.99 and continued till the issuance of order dated 4.6.99 by which his services has been terminated. It is pertinent to mention here that he has only been paid his salary for the period w.e.f. 23.3.99 to 31.3.99 and thereafter no salary has been paid to him. Being aggrieved the applicant preferred representations to the authority concerned praying for his salary etc.

4.8. That the applicant begs to state that the respondents have appointed him after canceling the appointment of Md.Mir Hussain Ali (Respondent No.6) and in the said order dated 22.3.99 it has been categorically mentioned that the same has been issued in supersession of the order dated 24.2.99 by which Respondent No.6 has been appointed. The respondents while issuing the order dated 22.3.99 has also categorically mentioned that said Md.Mir Hussain Ali (Respondent No.6) is not a permanent resident of Village Chandrapur and aforesaid fact has been pointed out by the

Gaonburah of Village Chandrapur. It is pertinent to mention here that as per the recruitment rules one of the criteria for getting appointment as ED Packer is that the applicant must be a permanent resident of the village in which the particular Post Offices is located. To that effect the "Gaonburah" of the said Chandrapur Village Shri Shyamal Karmakar has issued a certificate on 9.3.99 by which it has been categorically mentioned that the Respondent No.6 is not a permanent resident of Village Chandrapur.

A translated copy of the certificate dated 9.3.99 is Annexed herewith and marked as Annexure-4.

4.9. That the applicant begs to state that as stated above the Gaonburah concerned has given the Annexure-4 Certificate stating categorically that the Respondent No.6 Md.Mir Hussain is not a resident of Village Chandrapur. It is pertinent to mention here that at the time of submission of application for the post of ED Packer, under Chandrapur Post Office, the respondent No.6 made a statement regarding his address that he has been staying with one Md.Tamiz Ali who is a resident of village Chandrapur. The aforesaid statement made by the respondent No.6 is false and the same has been made only to get the requisite qualification as local resident of village Chandrapur. In fact the respondent No.6 is a resident of Hazo (Assam) and as per the required qualification regarding residentship, he does not come under the purview of eligible candidate, but to cover of his aforesaid disqualification he made a false statement in his application that he is a resident of village Chandrapur under C.O. Md.Tamiz Ali, son of Babar Ali, who is a resident of village Chandrapur. The official respondents, thereafter made some enquiries and ultimately said Md.Tamiz Ali on 26.2.99 gave a declaration before

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two witnesses, namely B.R.Deka O.S.Mail and Md.Abdur Rahman O.S.Mail, declaring that said Md.Mir Hussain Ali is not known to him.

A Translated copy of the said declaration dated 26.2.99 is annexed herewith and marked as Annexure-5.

4.10. That as stated above the respondent No.6 does not fulfill the required qualification regarding the permanent address as per the recruitment rule, as he is a resident of village Soniadi Hazo (Assam). To that effect it is stated that the father of the Respondent No.6, Md.Sannur Ali is presently working as a permanent Postal Employee in the Hazo, Post Office and at the time of opening of his service book, he has given his address as village Soniadi, Hazo (Assam). From the aforesaid fact it is clear that the respondent No.6 is also a resident of Hazo and he has given his address as Chandrapur only to cover his disqualification regarding address.

The applicant inspite of best effort could not collect any document regarding the permanent address of the father of the respondent No.6 (Md.Sannur Ali) and hence prays before this Hon'ble Tribunal for a direction to produce all the relevant documents.

4.11. That after issuance of the order dated 4.6.99 the respondent No.6 approached the Hon'ble Tribunal by way of filing C.A.No.177/99 suppressing the aforesaid factual matter. The Hon'ble Tribunal on 3.6.99 while admitting the application was pleased to pass an interim order protecting his interest. In the said O.A. 177 /99 the present applicant has been arreya as party respondents No -7. It is pertinent to mention here that after the issuance of the interim order the respondent No.6 had to file contempt petition vide No.C.P.25/99 in which he prayed for

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During the pendency of

implementation of the said interim order. During the pendency of the said contempt petition the official respondents have issued an order complying the interim order passed by this Hon'ble Tribunal.

4.12. That the applicant begs to state that the action of the respondents in issuing the order dated 4.6.99 (Annexure-3) is illegal and violative of the settled principles laid down by the Hon'ble Apex Court. It is further stated that at the time of issuance of Annexure-3 order dated 4.6.99, the applicant was holding the post of ED Packer under the Postal Department which is a civil post and hence he is entitled to get the protection under Article 311 of the Constitution of India. It is noteworthy to mention here that the procedure for terminating the service of a civil post holder has not been followed in the instant case as the respondents have failed to issue any prior notice before issuance of the same.

4.13. That the applicant begs to state that the Hon'ble Tribunal had occasions to deal with the similar kind of case i.e. O.A.No.170/98 (Ashim Kr.Deb Vs.U.O.I & Ors.) wherein the similar nature of termination order was issued without notice. The Hon'ble Tribunal on 27.8.98 was please to dispose of the O.A. directing the respondents to consider the representation in light of the decision of the Hon'ble Apex Court in Superintendent of Post Offices versus P.K.Rajamma etc. reported in 1977 SLJ.532 and Article 311 of the Constitution of India. Thereafter pursuant to the aforesaid order dated 27.8.98, the termination order of Shri Ashim Kr.Deb has been set aside and finally he was reinstated in service vide order dated 15.4.99.

Copies of the order dated 27.8.98 passed in O.A. No.170/98 and the order dated 15.4.99 are annexed herewith and marked as Annexure-6 AND 7.

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3/1/99
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4.14. That the applicant begs to state that his case is squarely covered by the above mention decision of the Apex Court wherein it has been categorically mention that Extra Departmental Employees of Postal Deptt. are holders of civil posts and hence they are entitled to get the protection under Article 311 of the Constitution of India. It is pertinent to mention here that the respondents while issuing the Annexure-3 order dated 4.6.99 terminating his service have failed to follow the procedure prescribed for such termination wherein prior notice is one of the requisite criteria. In that view of the matter the entire action on the part of the respondents in issuing the impugned order dated 4.6.99 without any prior notice is illegal, arbitrary and violative of Article 311 of the Constitution of India.

4.15. That the applicant begs to state that the action of the official respondents in appointing the respondent No.6 is illegal and same is contrary to the recruitment rules for appointment to the said post of ED Packer. It is noteworthy to mention here that for appointment to the post of ED Packer along with the other qualifications, one must be resident of the particular place under the postal jurisdiction of the said post office where the vacancy arises. The respondent No.6 applied for the post of ED Packer in the Chandrapur Sub Post Office but in fact he is not a resident of village Chandrapur. The respondents knowing fully well has been allowing him to continue in the said post which is illegal, arbitrary and violative of the recruitment rules. It is therefore the applicant through this application also prays for setting aside and quashing of the order appointing the respondent No.6.

4.16. That the applicant being aggrieved by the action of the respondents was constrained to move the Hon'ble Tribunal by way

Review Bench

of filing O.A. No 409/99. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to dispose of the said O.A. directing the applicant to prefer an appeal with a further direction to the respondents to dispose of the said appeal within a stipulated time, by a reasoned order.

A copy of the said Judgment and order dated 8.12.99 passed in O.A. No 409 is annexed herewith and marked as Annexure-8.

4.17. That pursuant to the aforesaid judgement and order dated 8.12.99, the applicant preferred an appeal dated 16.12.99 highlighting all the facts as well as the grounds. The applicant preferred said appeal dated 16.12.99 to the Sr Superintendent of Post Offices enclosing all the relevant documents.

The applicant instead of repeating the contentions both factual and legal, begs to rely and refer the same at the time of hearing of the case with a further prayer that the same may be treated as part of the pleadings.

A copy of the said appeal dated 16.12.99 is annexed herewith and marked as Annexure-9.

4.18. That the applicant begs to state that on receipt of the said appeal, the respondents i.e., the Sr Superintendent of Post Offices issued an order dated 10.1.2000 by which the appeal filed by the applicant has been rejected without applying his mind into the matter. In the said order the authority concerned failed to take into the fact that the appointment of Hd Mir Hussain was not in conformity with the Recruitment Rules as well as the fact of selection and appointment of the applicant after due selection. The said authority has also wrongly interpreted the Art 311 of the Constitution of India and has finally stated that the case of the applicant does not come under the preview of Art 311 of the Constitution of India. Again the said authority has failed to

24/1/2000

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take into consideration of the matter of one Sri Ashim Kumar Debnath who is also similarly situated person like that of the applicant cited by him in his appeal.

A copy of the said order dated 10.1.00 is annexed herewith and marked as Annexure-10.

4.19. That the applicant begs to state that on receipt of the said impugned order 10.1.00, he preferred a review application praying for review of the said order dated 10.1.00. In the said review the applicant has taken all the relevant ground for setting aside the order dated 10.1.2000. However, the respondents are yet to reply to the said review application.

Instead of repeating the contentions and grounds made in the said review application, the applicant begs to rely and refer the same at the time of hearing of the case. The applicant also prays before the Hon'ble Tribunal that the same may be treated as a part of the O.A.

A copy of the said review application is annexed herewith and marked as Annexure-11.

4.20. That the applicant begs to state that since his appointment was following the due process of law vide order dated 24.4.99 and since he has joined the post and performed duty for some time and hence the termination without any notice, as the post of ED Packer is a civil post, is bad in law and hence the same is liable to be set aside and quashed.

4.21. That the respondent No 6 does not possess required qualification to hold the post of ED Packer and hence his termination was quite in order. However, same principles can not be made applicable to the applicant. In fact, the respondent No.6 Md. Mir Husain is not a permanent resident of Chandrapur village and as per the recruitment rule he is not eligible to said post

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of ED Packer.

4.22. That as per the order of appointment/selection, dated 23.3.99 it has been stated that the said order has been issued in supersession of order dated 24.2.99 by which Md Mir Hussain, respondent No.6 has been appointed. On the other hand, by the said order itself the applicant has been selected and after such selection following the due process applicant has taken charge of the said post and hence the contention made in the order dated 10.1.2000 is not correct and liable to be set aside and quashed.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action/inaction on the part of the respondents in issuing the impugned order of termination dated 4.6.99 and the order disposing of the appeal dated 10.1.2000 is illegal, arbitrary and violative of principles of natural justice.

5.2. For that the respondents have failed to take into consideration the selection, appointment and procedure observed in taking charge of the said post by the applicant in issuing the impugned orders dated 4.6.99 and 10.1.2000 and hence same are liable to be set aside and quashed.

5.3. For that the applicant being a selected candidate for the post of ED Packer the respondents ought not to have issued the order of termination without first issuing notice enabling him to represent his case and having not done so the respondents have committed manifest error in law and hence same is not sustainable in the eye of law.

5.4. For that the law is well settled that the extra Departmental employees are holders of civil posts and their service can not be terminated without serving prior notice to that effect.

The respondents being a model employer ought to have considered that aspect to the matter before issuance of the impugned order of termination.

5.5. For that the respondents, have failed the recruitment rules in appointing the respondent No.5 who is not qualified to hold the said post.

5.6. For that the respondents have failed to take into consideration previous guidelines as well as procedural aspect while issuing the impugned Annexure-3 order dated 4.6.99 and same is not sustainable in the eye of law and same is liable to be set aside and quashed.

5.7. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and liable to set aside and quashed.

The applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

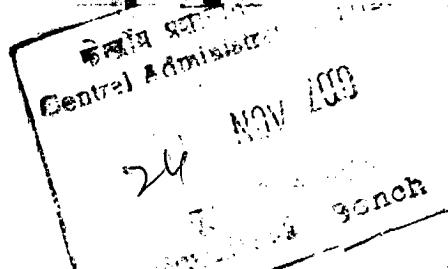
That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

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

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application



be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To set aside and quash Annexure-3 order dated 4.6.99 with a further direction to reinstate the applicant to the post of ED Packer in the Chandrapur Sub Post Office with retrospective effect, with all consequential service benefit including arrear salary etc.

8.2. To set aside and quash the appointment order of the respondent No.6 after declaring him unqualified to hold the said post of ED Packer under Chandrapur Sub Post Office.

8.3. To set aside and quash the appellate order dated 12.1.2000 (Annexure-10), with a further direction to reinstate the applicant to the post of ED Packer in the Chandrapur Sub Post Office with retrospective effect, with all consequential service benefit including arrear salary etc.

8.4. Cost of the application.

8.5. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the application the applicant prays for an interim order directing the respondents to allow him to continue in the post of ED Packer under Chandrapur Sub Post Office.

10. *****

11. PARTICULARS OF THE I.P.O.:

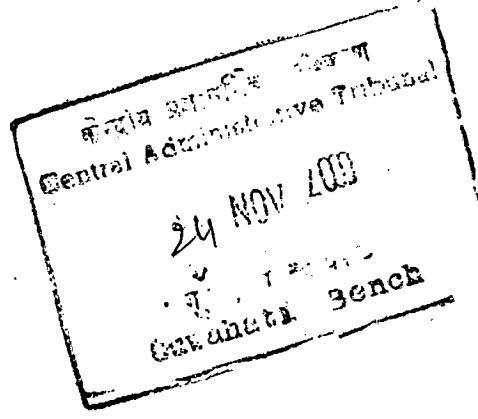
1. I.P.O. No. : 2G 503942

2. Date : 20-11-2000

3. Payable at : Guwahati.

12. LIST OF ENCLOSURES: As stated in the Index.

VERIFICATION



I, Shri Prabin Talukdar, son of Late Chandri Talukdar, aged about 29 years, resident of village Bagicha Gaon, Chandrapur, Guwahati, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, ^{and 23 to 28} are true to my knowledge and those made in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 to 28 are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 24th day of Nov 2000.

Signature.

Sri Prabin Talukdar.

Annexure-I

Department of Posts, India

Sub-Divisional Inspector (Postal)

Guwahati Sub Division
Guwahati-781001.

No.A-1/Chandrapur S.O/99

Dated at Guwahati 22.3.99.

(i) Sub-Selection of E.D. Packer at Chandrapur S.O.

Tb,

Sri Prabin Talukdar

C/o Sri Labanya Patgiri

Chandrapur Police Station

P.O. Chandrapur, Assam.

This is in super session of this office memo No.A-1/Chandrapur/99 dated at Ghy 24.2.99. Md.Mir hussain Ali, C/o Md. Tamix Ali village/P.O. Chandrapur, Kamrup is not at all a person of post village as pointed out by the Gaonburah concerned. ✓

Sri Prabin Talukdar is hereby selected for appointment as E.D. Packer at Chandrapur S.O. Sri Talukdar should take charge immediately positively and return all the papers enclosed here with duly filled in and signed properly. ✓

(i) Attestation paper

(ii) Health Certificate

(iii) C/A

(iv) Descriptive particulars

(v) Request Form

Copy to:

1. The Sr.P.M. Guwahati G.P.O. for information and necessary action.

2. The S.P.M. Chandrapur S.O. for information and necessary action. He is asked to cause severity premium accordingly find herewith.

3. Sri B.R.Deka, O-S Mail-II, GHY for information and necessary

action who is hereby ordered to collect and submit charge reports to this office early.

4. Sr. Asstt. Director of Employment,
District Employment Exchange, Guwahati-21 for information and necessary action.

5. The Sr. Supdt. of P.Os., Ghy for kind information.

Sub-Divisional Inspector (Posts)

Guwahati East Sub Division

Guwahati-781001.

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-17- ~~17~~ -17-

ANNEXURE - 2

रा. नं. २०-६१
G.-६१

मार्तीय दाक विभाग
DEPARTMENT OF POSTS INDIA

(देखिए नियम २६७, डाक-तार विभाग ग्रन्थालय का यांत्र विभाग संस्कृत संस्कृत
(See Rule 267, Posts and Telegraphs Financial Handbook, Volume I, Second Edition)

चारों की वस्त्री पर चार रिपोर्ट और नार्सी और टिकटों की रोप
Charge Report and Receipt for cash and stamps on transfer of charge

रमणित किया जाता है कि

Certified that the charge of the office of

E.D./pekar

वार्षिक दाक विभाग में
वार्षिक दाक विभाग में
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वार्षिक दाक विभाग में

on the date 23/3/99

को प्राप्त
को भाग्यहृषि

after noon in accordance with

No.

नाम

Dated

के अनुसार दिया।
from

Al/Chanderpal S.O./99 for by S.O. 9.

भारपुर अधिकारी
Relieved Officer

भारपुर अधिकारी
Relieving Officer

Sri Somiran Chakraborty Sri Pralein Talukdar,
23/3/99 (कुपया पूछ उत्तिष्ठ)
23.3.99 (P. T. O.)

Annexure-3

Department of Posts, India

Guwahati East Sub Division

Guwahati-781001

Memo No. A-1/Chandrapur S.O./99

Dated at Guwahati 4.6.99.

The following orders are issued to have its immediate effect.

1. The selection of Md. Mir Hussain as E.D.Packer, Chandrapur S.O. made under this office memo /order dated 24/2/99 was cancelled under this office memo/order dated 22/3/99 and simultaneously his termination memo has also issued under this office memo & even no dated 12.4.99. And thus in continuation of the above Md Mir Hussain is struck off from the office with immediate effect.
2. Sri Prabin Talukdar who was elected for the post of ED Packer Chandrapur S.O. under this office memo of even no dated 22.3.99 is cancelled and the incumbent is terminated with immediate effect.
3. Sri Samiran Chakravorty EDDS Chandrapur S.O. is ordered to work as ED Packer Chandrapur S.O. in addition to his own duty till further arrangement.

Sd/-

Sub Divisional Inspector (Posts)

Guwahati East Sub Divn

Guwahati-781001.

Copy to:-

1. The SPM Chandrapur S.O. for information. He will please report compliance the above order by next post positively.

2. Md.Mir Hussaion for information.
3. Sri Prabin Talukdar for information.
4. The Sr.Suptd.of P.Os, Guwahati Divn. Guwahati for kind information.
5. Sr.Postmaster, Guwahati GPO for kind information and necessary action.

Sd/-

Sub Divisional Inspector (Posts)
Guwahati East Sub Division
Guwahati-781001.

CERTIFICATE

This is to Certify that Md.Mir Hussain Ali is not the resident of Village Chandrapur. He is not known to me.

Therefore, this certificate is issued to that effect.

(Seal)

Shyamlal Karmakar

9.3.99.

I Shri Tamiz Ali, son of Shri Babar Ali, I do not know Shri Mir Ali Hussain of Chandrapur Mill B.O. BPM. I have given this written statement with my sound mind.

Md.Tamiz Ali

Chandrapur Mill Post Office

26.2.99

Witness:

1. Bishnu Ram Deka, O/S Mail, 26/2/99.
2. Md.Abdur Rahman, O/S Mail, 26.2.99.

In The Central Administrative Tribunal

GUWAHATI, BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO.

7-0

OF 199 8

Applicant(s): Shri Ashwin K. Deb

- 25 -

Respondent(s): Union of India & Ors

Advocate for Applicant(s) : Mr. B.K. Shekhar

Mr. Schenck.

Advocate for Respondent(s) Mr. N. K. Nair

Mr. Shrivastava

Adell. C. C. S. C.

27.8.98

This application has been filed challenging the Annexure-5 order dated 2.6.1998 by which the applicant's service was terminated for administrative reasons. The facts are :
The applicant was appointed as Extra Departmental Branch Post Master

contd..



John

Notes of the Registry

Date, 27.8.98

Order of the Tribunal

28/23

27.8.98 on condition that he would have to make own arrangement for accommodating the office. Pursuant to the appointment he made arrangement for accommodation, and suddenly without any notice the impugned order was passed. Thereafter the applicant filed Annexure-7 representation dated 23.6.1998 to the Postmaster General, Assam Circle. The said representation has not yet been disposed of. Hence the present application.

We have heard Mr B.K.Sharma, learned counsel appearing on behalf of the applicant and Mr G.Sarma, learned Addl.C.G.S.C for the respondents. Mr G.Sarma submits that he has no instruction as such. On the last occasion we granted two weeks time to Mr G.Sarma to enable him to receive instructions. It is not known what is the administrative reason. Even if there are some administrative reasons according to Mr B.K.Sharma the applicant cannot be terminated in view of the decision of the Apex Court in Superintendent of Post Offices vs. P.K.Rajamma etc. reported in 1977 S.L.J. 532. As per the said decision according to Mr Sharma the applicant was a holder of a civil post and he was entitled to get the protection under Article 311 of the Constitution. On the face of it we find that protection had not been given. However, we are not entering into the merit in view of the fact that the representation has not yet been disposed of. We are not inclined to admit the application as six months period is not over. Accordingly we do not entertain the application. However, we hope and trust that the respondents shall dispose of the representation as early as possible.

Application is disposed of. No costs

Sd/- Vice-Chairman

Sd/- Member(A)

Certified to be true Copy

অসম প্রতিপ্রিয়

Section Officer (A)

অসম প্রতিপ্রিয় প্রতিপ্রিয়
Central Administrative Tribunal
অসম প্রতিপ্রিয় প্রতিপ্রিয়
Guwahati Bench, Guwahati-6
অসম প্রতিপ্রিয়, প্রতিপ্রিয়

12/9/98

-24-

DEPARTMENT OF POST, INDIA
OFFICE OF THE POST MASTER GENERAL, ASSAM REGION
GUWAHATI - 781 001

Memo. No. Staff/25-1/98/RP(Loose)Dated at Guwahati the 15th April/99

Sri Ashim Kr. Deb, Ex-BPM, Baglaghat B.O. in account with Srikona S.O. in Cachar Division has preferred an appeal dtd. 23.6.98 against his termination from the post of EDBPM vide Sr. Supdt. of P.Os, Cachar Division, Silchar Memo. No. H3-857/PF dt. 2.6.98.

Sri Ashim Kr. Deb, who was appointed as EDBPM, Baglaghat BO in account with Srikona S.O. under Silchar HO by the S.S.P.Os, Cachar Dvn. Memo. No. H3-857/PF dt. 10.1.98, was terminated from service on the following grounds.

1. His continuation was found unjust on administrative grounds.
2. In exercise of Rule 6 of ED Agents (Conduct and Service) Rules 1964 and in conformity with the instructions from APMG(Vig), O/o CPMG, Assam Circle, Guwahati.

I have gone through the case and found that no natural justice has been extended to the official in regard to the termination order. Moreover, rules prescribing the procedure to be followed regarding termination of services of ED Agents has not been scrupulously followed.

Hence, I, Sri B. SELVAKUMAR, Director Postal Services, Assam Region, Guwahati hereby order to set aside the orders No. H3-857/PF dtd. 2.6.98 of S.S.P.Os, Cachar Division, Silchar who is also the Appointing Authority.

Signature
(B. SELVAKUMAR)
Director of Postal Services
Assam Region: Guwahati-781 00

Copy to -

- ✓ Sri Ashim Kr. Deb, Ex- BPM, Baglaghat, S/O (late) Anil Ch. Deb, Vill. & P.O. Baglaghat via - Srikona S.O. Dist. Cachar.
- 2-3. The Sr. Supdt. of P.Os, Cachar Division, Silchar for information and necessary action.
4. Spare. (cc)

Signature
Director Postal Services
Assam Region: Guwahati-781 001

-25-

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH GUWAHATI

ORDER SHEET

APPLICATION NO. 409/99

OF 199

Applicant(s) Sri Prabin Talukdar.

Respondent(s) Union of India and ors.

Advocate for Applicant(s) Mr. B.K. Sarma,
Mr. S. Sarma, Mr. C.K. Nair

Advocate for Respondent(s)

C.G.S.C.

Notes of the Registry

Date

Order of the Tribunal

8.12.99

In this Original Application the applicant has challenged the Annexure-3 order of termination dated 4.6.99. According to the applicant the order of termination was illegal. It has been stated at bar there is a provision for statutory appeal under Rule 23 of CCS(CCA) Rules. Without exhausting the said remedy the applicant has approached this Tribunal.

Heard Mr. S.Sarma, learned counsel appearing on behalf of the applicant and Mr. B.S. Basumatary, learned Addl. C.G.S.C. Mr. Sarma submits that in view of the various Apex Court judgements and order the order of termination of the applicant is illegal.

On hearing the counsel for the parties this Tribunal is not inclined

Contd..



Att'd
P.S.

O.A. 409/99

Notes of the Registry	Date	Order of the Tribunal
1. Ismaiel	8.12.99	<p>to entertain the application. However the applicant may prefer an appeal under the provisions of law within a period of 15 days from today. If such appeal is filed the Appellate Authority shall take the appeal as if filed within time and the respondents shall dispose of the appeal at an early date by a reasoned order. If the applicant is still aggrieved he may approach the appropriate authority.</p> <p>With the directions made above, the original Application is disposed of.</p> <p>Considering the facts and circumstances of the case, I make no order as to costs.</p>

Sd/- VICECHAIRMAN

Certified to be true Copy
प्रतिलिपि

13/12/99
Section Officer (I)
Central Administrative Tribunal
Guwahati Bench, Guwahati-8
प्रधानाधी न्यायपत्र, गुवाहाटी-8
13/12/99

Albord
m

Annexure-9.

To,

16.12.99

The Senior Superintendent of Post Offices
Guwahati Division,
Guwahati.

Sub: Appeal against the order of termination dated 4.6.99
issued by the Sub Divisional Inspector (Posts) Guwahati.
Ref.: (1) Order No.S.O./99 dated 4.6.99.
(2) Order dated 8.12.99 passed in O.A.No.409/99.

Sir,

With due deference and profound submission I beg to state the few following lines before your honour for kind consideration and necessary action thereof.

That after completion of my H.S.L.C Examination, I was searching for a job and accordingly I registered my name in the Local Employment Exchange. Thereafter, I got an intimation vide office order No.A-1/Chandrapur S.O./99 dated 22.3.99 by which I was selected for the post of E.D. Packer in the Chandrapur S.O. Accordingly on 23.3.99 I joined my duty by submitting joining report and I took over my charge from one Shri Samiran Chakravorty who was holding the said post of E.D.Packer.

That it is pertinent to mention here that in my appointment letter dated 22.3.99, there has been an expression that the same has been issued in supersession of an earlier order dated 24.2.99 by which one Md.Mir Hussaich Ali has been appointed as E.D.Packer in the said Chandrapur S.O.. By the aforesaid order there has been a categorical mention that the order dated 22.3.99 has been issued canceling the earlier order dated 24.2.99 as said Md.Mir Hussain does not possess the required qualification

for getting the said appointment of E.D. Packer. The eligibility criteria regarding residential address does not permit Md.Mir Hussain for getting such appointment. In fact he is not a resident of Vill.Chandrapur. He is a resident of Hazo . It is also a fact that his father is a permanent employee of Hazo Post Office and for his such appointment he has submitted his permanent address as Hazo Vill. "Soniadi". Md Mir Hussain Ali, at this time of his appointment as E.D,Packer had submitted before the authority concerned, that he is a permanent resident of vill Chandrapur but same is not true. In the address Md.Mir Hussain has stated the name of one Md.Tamiz Ali to point out his address, but subsequently-said Md.Tamiz Ali refused his identity by issuing a certificate dated 26.2.99 before two witnesses namely Shri Bishnu Ram Deka O/S Mail and Shri Abdur Rahman O/S Mail. The "Gaon Burah" of Chandrapur village has also issued a certificate on 9.3.99 certifying that said Md.Mir Hussain is not a permanent resident of village Chandrapur.

That it was in the midts of the aforesaid facts, surprisingly I was served with a copy of order dated 4.6.99 under reference by which my service has been terminated canceling my order of appointment dated 22.3.99 mentioned above. Prior to issuance of the said order of termination no notice has been issued to me, to which I am entitled to. In this connection I beg to state that the Hon'ble Supreme Court in its various judgement has held that persons appointed as an Extra Departmental Employee in the Postal Deptt are holders of Civil Post and as such he is entitled to get the protection under Article 311 of the Constitution of India and the Laws framed thereunder. In this connection I beg to mention, one order passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A.No.170/98 where in the said Law laid down by the Hon'ble Supreme Court has been dis-

cussed at details. It is also pertinent to mention here that pursuant to the aforesaid order dated 27.8.98 passed in O.A.No. 170/98, the appeal preferred by the said applicant was allowed vide order under memo No. Staff/25-1/98/RP (Loose) dated 15.4.99 issued by the Director Postal Services, Assam Region, Guwahati. By the said order dated 15.4.99 earlier termination order dated 2.6.98 passed in favour of the applicant at O.A. No.170/98 has been allowed to join his duties.

That sir, in view of the aforesaid factual position, I was constrained to move the Hon'ble Tribunal by way of filing O.A.No.409/99 which was disposed of on 8.12.99 (Copy enclosed which will speak itself).

That in view of the aforesaid facts and circumstances I pray your honour to consider my case sympathetically on amongst the following grounds:-

- (i) For that I was appointed as an E.D.Packer after cancellation of order dated 24.2.99 by which Md.Mir Hussain got his appointment, as he does not possess the requisite qualification. However, in my case there has been no mention as to why my service has been terminated.
- (ii) For that prior to issuance of the order dated 4.6.99, I was entitled to get a notice of termination as per the settled provisions of Law laid down by the Hon'ble Supreme Court.
- (iii) For That, E.D.Packer is a civil post and as such before termination procedure prescribed, protecting the interest of the civil post holders, was not followed in my case while issuing the said order dated 4.6.99.
- (iv) For that, Md.Mir Hussain is not a permanent resident of village Chandrapur and the said fact was duly noticed by the competent authority and in fact the order relating to Md.Mir Hussain terminant was correct but same principles can not be made

applicable in my case as there is nothing adverse against me.

(v) For that there has been a various procedural irregularities which has seriously prejudice my rights as guaranteed under the Constitution of India and laws framed thereunder.

In the premises aforesaid, I with my folded hand pray your honour to consider my case sympathetically by allowing my present appeal on the grounds mentioned above to pass necessary order for my reinstatement by setting aside the order dated 4.6.99 and/or any such order/orders as may deemed fit and proper considering the facts and circumstances of the case.

An early favorable action in this regard from your Honour's end is highly awaited to provide justice to me.

Yours faithfully

(Prabin Talukdar)
Vill-Bagicha Gaon,
Panbari, Chandrapur,
Guwahati, Assam.

Advance copy to :

Sr. Supdt. of Post Offices (Guwahati Division) Guwahati

Enclosed :

1. Order dated 22.3.99 (Appointment order)
2. Order dated 23.3.99 (Charge Report/order)
3. Order dated 4.6.99 (Termination order)
4. Certificate dated 9.3.99 by Gaon Burah, Chnadrapur Village.
5. Certificate dated 26.2.99 by Shri Tamiz Ali.
6. Order dated 27.8.98 passed in O.A.No.170/98
(A.K.Deb vs U.I.O. & Ors.)
7. Order dated 15.4.99 passed by DPS (Assam Region)
8. Order dated 8.12.99 passed in O.A.No.409/99
(F.Talukdar vs U.O.I. & Ors.)

-31-

R/S
A/D

Department of Posts : India
 Office of the Sr. Supdt. of Post Offices: Guwahati Division
 Meghdoot Bhawan 3rd floor: Guwahati -781001

To,

Shri Prabin Talukdar,
 Vill- Bagichagaon,
 Panbari, Chandrapur
 Guwahati.

No. A2-19/Chandrapur,

Dated at Guwahati the 10th January 2000

Ref: Your Appeal dtd. 16-12-99.

This is to inform you that I am in receipt of a copy of order dated 8-12-99 passed in O.A. No. 409/99 and your appeal of dated 16-12-99 relating to appointment of ED Packer, Chandrapur SO. I have gone through the said order and your appeal and understood the contents there of. By the said judgement the Honourable Tribunal has observed as under.

On hearing the counsel for the parties the Honourable Tribunal did not incline to entertain your application. However the Tribunal directed the respondent to dispose of the appeal if received within 15 days from the applicant from date of issue of Tribunal Order.

✓ In your appeal you have stated that you were selected as ED Packer, Chandrapur SO vide Sub-Divisional Inspector, Guwahati East No. A-1/Chandrapur SO/99 dated 22-3-99, to this effect you have failed to annex relative appointment letter. In fact no appointment letter was issued by the competent authority in your favour. In absence of formal appointment letter the provision for entitlement to get protection under Article 311 of the constitution of India and law framed there under does not arise. The Administrative Tribunal, Guwahati Bench O.A. No. 170/98 you have mentioned is related to a case where appointment letter was issued to a BPM. So the circumstances shown by you for consideration do not come under the zone of consideration. On the other hand Honourable C.A.T. in O.A. No. 177/99 dated 3-6-99 directed not to remove Md. Mir Hussain Ali from the post of ED Packer, Chandrapur S.O. who was selected as ED Packer, Chandrapur SO vide Sub Divisional Inspector, Guwahati East No. A-1/Chandrapur/99 dtd. 24-2-99. So in a single post two persons can not be selected. So the termination order issued by competent authority canceling your selection as ED Packer, Chandrapur SO is quite in order.

In view of the above circumstances your prayer for reinstatement in the post of ED Packer, Chandrapur SO can not be considered and your appeal is disposed off as directed by the Honorable C.A.T., Guwahati.

✓
 Sr. Superintendent, of Post Offices,
 Guwahati Division, Guwahati-781001

Annexure-II.

To,
The Senior Superintendent of Post Offices
Guwahati Division,
Guwahati.

Sub:- Review of the order vide No A2-19/Chandrapur dated 10.1.2000.

Ref.: (1) Order No A2-19/Chandrapur, dated 10.1.2000.
(2) Order No. S.O./99 dated 4.6.99.
(3) Order dated 8.12.99 passed in O.A.No.409/99.

Sir,

With due deference and profound submission I beg to state the few following lines before your honour in the form of a Review application for reviewing the order dated 10.1.2000.

BACKGROUND OF THE CASE.

That after completion of my H.S.L.C Examination, I was searching for a job and accordingly I registered my name in the Local Employment Exchange. Thereafter, I got an intimation vide office order No. A-1/Chandrapur S.O./99 dated 22.3.99 by which I was selected for the post of E.D. Packer in the Chandrapur S.O. Accordingly on 23.3.99 I joined my duty by submitting joining report and I took over my charge from one Shri Samiran Chakravorty who was holding the said post of E.D.Packer.

That it is pertinent to mention here that in my appointment letter dated 22.3.99, there has been an expression that the same has been issued in supersession of an earlier order dated 24.2.99 by which one Md.Mir Hussaion Ali has been appointed as E.D.Packer in the said Chandrapur S.O.. By the aforesaid order there has been a categorical mention that the order dated 22.3.99 has been issued canceling the earlier order dated 24.2.99 as said Md.Mir Hussain does not possess the required qualification for getting the said appointment of E.D. Packer. The eligibility criteria regarding residential address does not permit Md.Mir Hussain for getting such appointment. In fact he is not a resident of Vill.Chandrapur. He is a resident of Hazo. It is also a fact that his father is a permanent employee of Hazo Post Office and for his such appointment he has submitted his permanent address as Hazo Vill. "Soniadi". Md.Mir Hussain Ali, at this time of his appointment as E.D.Packer had submitted before the authority concerned, that He is a permanent resident of vill Chandrapur but same is not true. In the address Md.Mir Hussain has stated the name of one Md.Tamiz Ali to point out his address, but subsequently said Md.Tamiz Ali refused his identity by issuing a certificate dated 26.2.99 before two witnesses namely Shri Bishnu Ram Deka C/S Mail and Shri Abdur Rahman O/S Mail. The "Gaon Burah" of Chandrapur village has also issued a certificate on 9.3.99 certifying that said Md.Mir Hussain is not a permanent resident of village Chandrapur.

That it was in the midst of the aforesaid facts, surprisingly I was served with a copy of order dated 4.6.99 under

reference by which my service has been terminated canceling my order of appointment dated 22.3.99 mentioned above. Prior to issuance of the said order of termination no notice has been issued to me, to which I am entitled to. In this connection I beg to state that the Hon'ble Supreme Court in its various judgment has held that persons appointed as an Extra Departmental Employee in the Postal Deptt are holders of Civil Post and as such he is entitled to get the protection under Article 311 of the Constitution of India and the Laws framed thereunder. In this connection I beg to mention, one order passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A.No.170/98 where in the said Law laid down by the Hon'ble Supreme Court has been discussed at details. It is also pertinent to mention here that pursuant to the aforesaid order dated 27.8.98 passed in O.A.No. 170/98, the appeal preferred by the said applicant was allowed vide order under memo No. Staff/25-1/98/RF (Loose) dated 15.4.99 issued by the Director Postal Services, Assam Region, Guwahati. By the said order dated 15.4.99 earlier termination order dated 2.6.98 passed in favpur of the applicant at O.A. No.170/98 has been allowed to join his duties.

That sir, in view of the aforesaid factual position, I was constrained to move the Hon'ble Tribunal by way of filing O.A.No.409/99 which was disposed of on 8.12.99 (Copy enclosed which will speak itself).

That as per the direction of the Hon'ble Tribunal I have preferred an appeal before your honour for consideration of my case citing the following grounds.

- (i) For that I was appointed as an E.D.Packer after cancellation of order dated 24.2.99 by which Md.Mir Hussain got his appointment as he does not possess the requisite qualification. However, in my case there has been no mention as to why my service has been terminated.
- (ii) For that prior to issuance of the order dated 4.6.99, I was entitled to get a notice of termination as per the settled provisions of Law laid down by the Hon'ble Supreme Court.
- (iii) For That, E.D.Packer is a civil post and as such before termination procedure prescribed, protecting the interest of the civil post holders, was not followed in my case while issuing the said order dated 4.6.99.
- (iv) For that, Md.Mir Hussain is not a permanent resident of village Charidrapur and the said fact was duly noticed by the competent authority and in fact the order relating to Md.Mir Hussain termination was correct but same principles can not be made applicable in my case as there is nothing adverse against me.
- (v) For that there has been a various procedural irregularities which has seriously prejudice my rights as guaranteed under the Constitution of India and laws framed thereunder.

That thereafter I was served with a copy of the order dated 10.1.2000 by which my appeal has been rejected. In the said order dated 10.1.2000 my appeal has been rejected on the following grounds.

(i) That I have failed to annex the relative appointment order. In this connection I beg to rely upon the statement made in my appeal dated 16.12.99 wherein also I have annexed the order dated 23.3.99 which has been issued in supersession of an earlier order of appointment of Md. Mir Hussain. For better appreciation of factual position the relative portion of the order is quoted below;

"This is in supersession of this office memo No A-1/ Chandrapur /99 dated 24.2.99 ... Md. Mir Hussain Ali C/O Md Tamiz Ali Vill + P.O. Chandrapur Kamrup is not at all a person of post village as pointed out by the Gaon Borah Concerned.

Sir Prabin Talukdar is hereby selected for appointment as E.D.Packer at Chandrapur S.O. Sri Talukdar should take charge immediately, positively and return all the papers enclosed h/w duly filled in and signed properly."

That from the above appointment letter I was selected, appointed as well as direction has been issued to me for taking charge of the said post. In fact the similar appointment letters have been issued to other similarly situated person and pursuant to the said appointment orders they are still continuing in their respective service. It is noteworthy to mention here that similar appointment order has also been issued to Md. Mir Hussain Ali and he is still serving on the strength of the said order of appointment.

(ii) That in absence of formal appointment order I do not get the protection under Art 311 of the Constitution of India. The relevant portion of the said Article is quoted below, from Duega Das Basu's Shorter Constitution of India, Eleventh Edition.

"311(1) No person who is a member of a civil post of the Union or of an all India service or a civil service of a state or holds a civil post under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

"Amendments i.
Opportunity of hearing before termination."

"Scope of Art 310 and 311.
3. If a person's service are terminated or he is reduced in rank in contravention of the condition and formalities prescribed by Art 311 he has a cause of action to complain to the Court."

That further it is also pointed out that in view of the Apex court verdict reported in 1977 S.C.J. 532 an E.D. Employee is a holder of civil post and he is entitled to get the protection under Art 311 of the Constitution of India. The said principle

ple has been duly accepted by the Hon'ble Tribunal in O.A. No 170 of 1999 (Ashim Kr. Deb -vs- U.O.I & ors.). It is further stated that the same principle is also applicable to my case. In the aforesaid case (O.A. No 170 of 1998), his service was terminated without giving opportunity and in my case also no formal notice of termination has been given to me. Ultimately the DPS in consideration to his appeal has set aside the order of termination. Hence my case is also required to be considered taking the principles of the earlier case of Mr Deb.

(iii) That in case of Md Mir Hussain the Hon'ble Tribunal has passed an interim order and hence I can not be accommodated. In this connection I beg to state that Md. Mir Hussain has mislead the Hon'ble Tribunal and has deliberately suppressed the material facts and thereby got an interim order in his favour. It is further stated that in the said case the address given by him is not correct and basing on the same incorrect he has been given appointment which is contrary to the recruitment rules. In this connection certain amount of inquiry has also been made by you but till date the said fact has not been highlighted before the Hon'ble Tribunal by way of filing stay vacation petition. In any view of the matter since my appointment has been made in supersession of the appointment order of Md Mir Hussain, my stands independent and an independent view is required to be taken in my matter. On the other hand Md Mir Hussain's appointment and selection has been canceled by issuing my appointment letter so there is no question of stating him to be a selected candidate.

(iv) That in a single post two persons can not be selected. In this connection my answer is yes, in a single post there can not two selected persons. In fact the concerned authority while issuing my appointment order has canceled the appointment order of Md. Mir Hussain and hence even for a single minute there exists two persons simultaneously in the single post. Since the appointment of Md. Mir Hussain has been canceled on the ground of nonfulfillment of his eligibility criteria, and subsequently I got appointment to the said post, I order of appointment remains and question of holding a single post by two person does not exists. And lastly,

(v) That the termination order issued by the competent authority canceling my appointment as Ed Packer, Chandrapur S.O. is quite in order. In this context I beg to state that in view of the aforesaid facts the termination order is void-ab initio as the same has been issued without following the due processes of law as well as the facts narrated above.

That in view of the aforesaid facts and circumstances I pray your honour to review the order dated 10.1.2000 and/or pass necessary order/orders in accordance with the law.

In the premises aforesaid, I with my folded hand pray your honour to consider my case sympathetically by allowing my present review application on the grounds mentioned above to pass necessary order for my reinstatement by reviewing the order dated 10.1.2000 and/or any such order/orders as may deemed fit and proper considering the facts and circumstances of the case.

An early favorable action in this regard from your Honour's end is highly awaited to provide justice to me.

Yours faithfully

(Prabin Talukdar)
Villi-Bagicha Gaon,
Panbari, Chandrapur,
Guwahati, Assam.

Enclosed :-

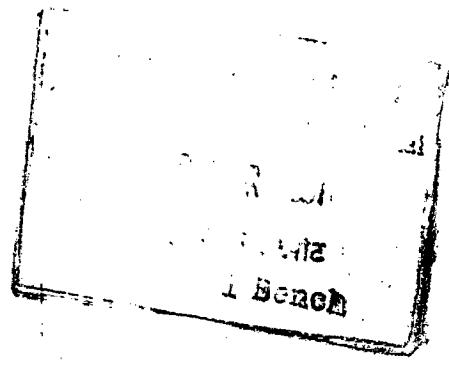
1. Appeal dated 16.12.99, with all enclosures.
2. Order dated 10.1.2000.

Copy to:- 1. Hon'ble Sjt, R.U.S Prasad, Director General, Dept. of Posts, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi, for sympathetic consideration and necessary action.

2. The Director Postal Services, Assam Region, Guwahati.

Yours faithfully

(Prabin Talukdar)
Villi-Bagicha Gaon,
Panbari, Chandrapur,
Guwahati, Assam.



Recd by
C. A. T. 9/4/2001

(A. D. B. A. O. P.)
Sr. C. C. S. C.
C. A. T. Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O.A. No. 411 OF 2000

Shri Prabin Talukdar

-Vs-

Union of India and others

IN THE MATTER OF

Written statements submitted by the
Respondents.

The respondents beg to submit brief history
of the case before submitting para-wise state-
ments which may be treated as a part of the
written statement.

(BRIEF HISTORY)

Consequent upon the promotion of regular ED/Pkr
Chandrapur S O the post was fallen vacant. Notice
inviting applications was forwarded to Distt.
Employment Exchange, Guwahati-21 on 28.01.99 by

contd.....

the Sub Divisional Inspector of Post Offices, Guwahati East Sub Division who is the appointing authority of the said post. The Employment Officer sponsored names of 6 (six) candidates on 22.2.99 alongwith their application.

Since the post was lying vacant for a long time the selection of Md. Mir Hussain Ali was made 24.2.99 vide memo no.

A1/Chandrapur SO/99 dated 24.2.99 pending verification of particulars testimonials and declaration. Accordingly Md. Mir Hussain Ali was given charge by the SPM, Chandrapur on 4.3.99. But on verification of the application of Md. Mir Hussain Ali, it was found that the applicant does not belong to Chandrapur village as pointed out by the Village Headman (Gaonburah).

Contd.....

Hence, the selection of Md. Mir Hussain Ali had to be cancelled and issued order by SDI/PO's East Sub Divn. is supersession of earlier memo dated 24.2.99 and selected another man Shri Prabin Talukdar and given charge on 23.3.99.

In the meantime the Hon'ble C.A.T., Guwahati passed an interim order on 3.6.99 and directed not to oust Md. Mir Hussain Ali from the post. The SDI,POs, East Sub Divn. issued struck off order dated 4.6.99 and thus terminated both the selections.

At present Md. Mir Hussain Ali has been re-instated as per direction of Hon'ble C.A.T. order.

Being aggrieved Shri Prabin Talukdar filed a CAT case in O.A. No. 409/99 and the Hon'ble CAT directed the applicant to pray an appeal to the appropriate authority within 15 days time. His appeal has been disposed of vide memo dated 10.1.2000 and his prayer for re-instatement in the ED Pkr. Post not considered.

He had to be replaced as per order dt. 18.12.99 passed by the Hon'ble Tribunal in O.A. 409/99. Now if he applies in any other post his case will be considered on merit.

Again Shri Prabin Talukdar submitted an application in O.A. No. 411/2K at CAT/Guwahati.

1. That with regard to paras 1,2, 3, and 4.1 the respondents beg to offer no comments.
2. That with regard to para 4.2 the respondents beg to state that as per department rules and procedure employment notice issued to the Employment Exchange only to sponsor suitable candidates.

The copy of notification in no circumstances can be handed over to the candidate since calling candidates from E/Exg.

3. That with regard to paras 4.3 and 4.4 the respondents beg to state that the appointment of Md. Mir Hussain Ali as ED Pkr. Chandrapur was not terminated by SDI/POs East Sub Division. But he used the term supersession of his previous order No. A1/Chandrapur/99 dated 22.4.99. The plea was that Md. Mir Hussain Ali was not a permanent resident of Chandrapur village. Md. Mir Hussain Ali filed a CAT case in OA 177/99 at Guwahati to remove Md. Mir Hussain Ali till finalisation of the case. In view of this, the selection of Shri Prabin Talukdar was not in order.

4. That with regard to para 4.5 the respondents beg to state that the contents of this para made by the applicant is not admitted.

5. That with regard to para 4.6 the respondents beg to state that since selection of Prabin Talukdar was irregular he was struck off

from duty as Md. Mir Hussain Ali was already working in the past. The selection of Sri Prabin Talukdar was itself not in order.

As per Hon'ble CAT, Guwahati direction the status quo has been maintained and Md. Mir Hussain Ali re-installed as ED Pkr. At Chandrapur SO.

6. That with regard to para 4.7 the respondents beg to state that the contents made in this para by the applicant is not admitted.

7. That with regard to paras 4.8, 4.9 and 4.10 the respondents beg to state that appointment case of Md. Mir Hussain Ali is correct as per latest CAT verdict and DG's instruction 17-104/93-ED and Trg dated 6.12.93.

8. That with regard to para 4.11 the respondents beg to state that C.P. 25/99 in O.A. No. 177/99 since been closed and status quo maintained.

9. That with regard to para 4.12 the respondents beg to state that it may be maintained that the petitioner's services were terminated on 4.6.99 before receipt of the court order and therefore, he was not called to continue with his job.

10. That with regard to para 4.13 the respondents beg to offer no comment.

11. That with regard to para 4.14 the respondents beg to state that the appointment of Prabin Talukdar as ED/Pkr. Was irregular since Md. Mir Hussain was appointed in the said post earlier.
12. That with regard to para 4.15 the respondents beg to offer no comment.
13. That with regard to paras 4.16 and 4.17 the respondents beg to state that the O.A. No. 409/99 and the appeal of the petitioner dtd. 16.12.99 is disposed of on 10.1.2000 without consideration for appointment.
14. That with regard to para 4.18 the respondents beg to state that since the appeal of the petitioner disposed of under O.A. No. 409/99 on 10.1.2000 and appointment of Prabim Talukdar was irregular and hence violation of Article 311 does not arise.
15. That with regard to para 4.19 the respondents beg to state that the review application of the petitioner dated 10.1.2000 has been sent to the next higher authority for disposal vide letter of even no. dtd. 14.7.2000.
16. That with regard to para 4.20 the respondents beg to state that the contents of this para made by the applicant is not admitted.
17. That with regard to paras 4.21 and 4.22 the respondents beg to offer no comments.

Grounds for relief with legal provision

18. That with regard to paras 5.1, 5.2 and 5.3 the respondents beg to state that in view of the submission made above the applicant is not entitled to get any relief since the selection was irregular.
19. That with regard to para 5.4 the respondents beg to state that since Md. Mir Hussain Ali appointed in the post as ED, Pkr. The appointment of 2nd person Prabin Talukdar in that post again was irregular and it does not mean the civil right violation to ED employees.
20. That with regard to paras 5.5 and 5.6 the respondents beg to state that the contents made in the paras are not admitted.
21. That with regard to para 5.7 the respondents beg to offer no comment.

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V E R I F I C A T I O N

I, Shri B. R. Chakravarthy

being authorised do hereby solemnly declare that the statement made in this written statement are true to my knowledge, believe and information and I have not suppressed any material fact.

And I sign this verification on this 3rd day
of March, 2001 at Guwahati.

B. Redhu
Declarant. 3/4/2001