

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 451/2001.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet.....OA-451/2001.....Pg.....1.....to.....3.....
2. Judgment/Order dtd. 27/06/2002.....Pg.....1.....to.....3.....Dismissed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....451/2001.....Pg.....1.....to.....14.....
5. E.P/M.P.....N/I.....Pg.....to.....
6. R.A/C.P.....N/I.....Pg.....to.....
7. W.S. Respondents No. 1, 2 & 3.....Pg.....1.....to.....16.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendement Reply by Respondents.....
15. Amendement Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Application No. 451 /2001

Applicant(s) :- Gisish Kalita

Respondent(s) :- W.O, I Tons

Advocate for the Applicant :- M. Chanda, Mrs. N. D. Goswami, G. N. Chakrabarty

Advocate for the Respondent: Addl. Case: B.C. Pathak

Notes of the Registry	Date	Order of the Tribunal
This is an application in form C. F. No. 38.501- deposited vide LP No. 10/1869/7888351.	23.11.01	The application is admitted. Call for the records. List the case for order on 1.1.2002.
Dated ... 20.11.2001 N.B. 22/11/01 Dy. Registrar		<i>Usha</i> Member
Notice prepared and sent to D/S for transmission to Respondents No 1 to 5 by Regd. A.D.	1.1.02	Await service report. List on 16.1.2002 for order.
<i>1/1/02</i> D/No <u>4463</u> h/ <u>4467</u> Dtd _____	16.1.02	<i>Usha</i> Member
		Four weeks time is allowed on the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. to file written statement. List on 14.2.2002 for order.
① Service report once still awaited.	mb	<i>Usha</i> Member
<i>15.1.02</i>		Vice-Chairman
No. written statement has been filed.	mb	
<i>13.2.02</i>		

14.2.02 List on 20.3.2002 enabling the
respondents to file written statement.

Mr. written statement
has been filed.

IC Ushan
Member

Vice-Chairman

bb

By
19.3.02

20.3.02 Heard Mr. M.Chanda, learned
counsel for the applicant and also
Mr. B.C.Pathak, learned Addl. C.G.S.C.
for the Respondents.

Referring to the communication
sent to Mr. B.C.Pathak, learned Addl.
C.G.S.C. submitted that the case of the
applicant is under consideration. Let
the Respondents submitted its written
statement so that the matter can be
disposed expeditiously. List on 26.4.02
for further order.

Order dtd. 20/3/02
Communicated to the
Parties Committ
27/3

No. written statement
has been filed.

By
24.4.02

Pendency of this application
shall not stand in the way of the
Respondents to consider the case of
the applicant in the light of the policy
of the department dated 23.2.1979 for
providing employment who are appointed
provisionally subsequently discharged
from service due to administrative
reasons.

IC Ushan
Member

Vice-Chairman

mb
26.4.02 List on 20/5/2002 to enable the
Respondents to file written statement.

No. w/s has been
filed.

By
17.5.02

IC Ushan
Member

Vice-Chairman

mb
20.5.02 List the matter for hearing on
27.5.2002. The Respondents may file written
statement within three weeks from today.

IC Ushan
Member

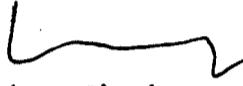
Vice-Chairman

bb

Notes of the Registry	Date	Order of the Tribunal
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27.6.02	Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is dismissed in terms of the order. No order as to costs.
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I C Usha
Member


Vice-Chairman

pg

Notes of the Registry Date Order of the Tribunal

telex 4
CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./~~xxx~~ NO. . 451, of 2001.

DATE OF DECISION ... 27-6-2002..

Shri Girish Kalita

APPLICANT(S)

Sri H. Dutta.

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Sri B.C.Pathak, Addl.C.G.S.C.

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 ?

Judgment delivered by Hon'ble Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 451 of 2001.

Date of Order : This the 27th Day of June, 2002.

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

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

Shri Girish Kalita,
S/o Sri Krishna Kalita,
Resident of village Law Para,
P.O. Law Para,
District - Nalbari (Assam).

....Applicant.

By Advocate Shri H.Dutta.

1. Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Communication,
Department of Posts,
New Delhi.
2. The Chief Postmaster General,
Assam Circle,
Meghdoott Bhawan,
Guwahati-781001.
3. The Superintendent of Post Office,
Nalbari, Assam.
4. The Sub Divisional Inspector of
Post Offices, West Sub Division,
Nalbari, Assam.
5. Sri Rajat Chandra Medhi,
Resident of Village Lawpara,
P.O. Lawpara,
District - Nalbari (Assam)

...Respondents

By Shri B.C.Pathak, Addl.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C)

This is the second round of litigation. The applicant earlier preferred O.A.126/2000 seeking for a direction for absorption under the respondents as EDDA.

In the above O.A. the applicant assailed the order of

contd..2

termination dated 1.4.2000 by which his appointment dated 5.4.1995 was terminated his service as an EDDA Law Para Branch office, Nalbari. In the aforementioned post the applicant was appointed on 5.4.1995 provisionally in view of the fact that a disciplinary proceeding was pending against the incumbent. Accordingly he was put off from the the duty. Disciplinary proceeding ended in his favour, accordingly the old incumbent was reinstated. On reinstatement the applicant was terminated. The earlier O.A. was accordingly dismissed with certain observations. The Tribunal while dismissing the application recorded the fact that the applicant rendered service for about five years indicating the policy for absorption of such person in the facts and situation, the Bench disposed the matter leaving the subject at the disposal of the authority. The applicant has now come before this Tribunal for a direction for his absorption.

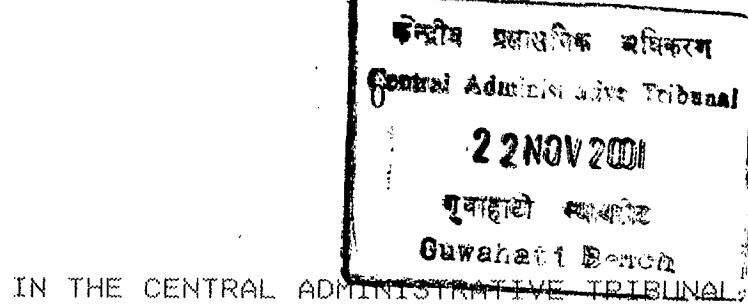
2. The respondents authority had submitted their written statement and stated that there was no vacant post at Kachua and Mukalmua in Nalbari District. The respondents however, fairly stated that the case of the applicant for absorption in any available vacant post is looked into and also stated that he would be accommodated as soon as vacant post suitable to him is available as per the guidelines laid down in DG P&T's letter No.43-4/77-Pen dated 23.2.1979 and also keeping in mind the judgment and order of the Tribunal in O.A.126/2000.

3. We have heard Mr H.Dutta, learned counsel appearing for the applicant as well as Mr B.C.Pathak, learned Addl.C.G.S.C for the respondents at length. Considering all the aspects of the matter we do not find any scope for intervention at this stage. We are fully satisfied to the steps taken by the respondents and it is expected that the respondents shall do the needful at the earliest available opportunity.

Subject to the observation made above, the application stands dismissed. There shall, however, be no order as to costs.

K.K. Sharma
(K.K.SHARMA)
ADMINISTRATIVE MEMBER

D.N.Chowdhury
(D.N.CHOWDHURY)
VICE CHAIRMAN



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

Title of the case : O.A. No. 451 /2001

Sri Girish Kalita : Applicant

- Versus -

Union of India & Others: Respondents.

INDEX

SL. No.	Annexure	Particulars	Page No.
01.	-----	Application	1-8
02.	-----	Verification	9
03.	I	Judgment & order dated 10.11.2000	10-12
04.	II	Representation dated 20.11.2000	13-14

Filed by

Date

Advocate

Sri Girish Kalita

To
Filed by the applicant
through Advocate
Girish Kalita
on 20/11/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI
(An Application under Section 19 of the Administrative Tribunals Act,
1985)

O.A. No. 451/2001

BETWEEN

Sri Girish Kalita
S/o Sri Krishna Kanta Kalita
Resident of village Law Para
P.O. Law Para
District Nalbari,
Assam.

.....Applicant

--AND--

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Communication,
Department of Posts,
New Delhi.
2. The Chief Postmaster General,
Assam Circle,
Meghdoot Bhawan,
Guwahati-781001
3. The Superintendent of Post Office,
Nalbari, Assam.

Sri Girish Kalita

4. The Sub Divisional Inspector of Post Offices, West Sub Division, Nalbari, Assam.

5. Sri Rajat Chandra Medhi, Resident of Village Lawpara, P.O. Lawpara, District-Nalbari, Assam.

..... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order against which this application is made.

This application is made praying for a direction upon the respondents for immediate absorption of the applicant to the post of Extra Departmental Delivery Agent (EDDA) at Lawpara Branch Post Office, Nalbari or at such other office in accordance with law and in terms of the judgment and order dated 10.11.2000 in O.A. No. 126 of 2000 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

Sri Hirish Kalita

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, protections and privileges as guaranteed under the Constitution of India.

4.2 That your applicant was initially appointed as Extra Departmental Delivery Agent (EDDA) in the Branch office, Lawpara, Dist. Nalbari vide Memo No. A1/Lawpara/95 dated 5.4.95, issued by the Respondent No.4, in place of one Shri Rajat Chandra Medhi, the regular EDDA, who was under a disciplinary proceeding. As per the appointment letter, the appointment of the present applicant was provisional and was subject to termination without notice following the final disposal of the disciplinary proceeding against Sri Rajat Chandra Medhi.

4.3 That the applicant, on receipt of the said provisional letter of appointment, joined as EDDA in the Lawpara Branch office with effect from 5.4.1995 and started functioning as EDDA with satisfaction of all concerned wherein he continued to work for more than 5 years i.e. until his services were terminated vide order No. A1/Lawpara/2000 dated 1.4.2000.

4.4 That the disciplinary proceeding against Sri Rajat Chandra Medhi continued for more than 5 years and during that period, the applicant shouldered the entire responsibility of the post of EDDA as said above. Eventually, the disciplinary proceeding ended and Sri Rajat Chandra Medhi was not exonerated by the disciplinary authority but surprisingly, at the instance of respondent no.4, it was decided to take back Sri Rajat Chandra Medhi in the post of EDDA at Lawpara Branch office on extraneous considerations and as a consequence the services of the present applicant were terminated by the respondents vide their order No. 17

Sri Girish Kulit

A1/Lawpara/2000 dated 1.4.2000 just to make way for re-absorption of Sri R.C.Medhi in an unfair and unjust manner.

4.5 That the applicant being highly aggrieved at this arbitrary and capricious action of the respondents resulting to his unprocedural, unceremonious and unjust termination, approached this Hon'ble Tribunal for protection of his rights and interests by filing an O.A. No. 126/2000. The Hon'ble Tribunal after examining the facts and circumstances of the case was pleased to dismiss the application and passed its order on 10.11.2000 in O.A. No.126/2000 observing that the respondents shall have to take care of the situation to accommodate the applicant as per existing rules and left the matter to the Postal authority for consideration of the case of the applicant in conformity with the accepted norms and policy as expeditiously as possible, preferably within three months from the date of receipt of the aforesaid order dated 10.11.2000.

Copy of judgment & order dated 10.11.2000 passed in O.A. No. 126/2000 is annexed hereto and marked as **Annexure-I**.

4.6 That the applicant thereafter submitted one application on 20.11.2000 to respondent No.3 through Respondent No.4 enclosing therewith a copy of the judgment and order dated 10.11.2000 passed in O.A. No. 126/2000 and praying for consideration of his appointment against the post of EDDA/EDMC, lying vacant at Kachua, Mukalmua in Nalbari district, in accordance and in compliance with the judgment and order dated 10.11.2000.

Copy of the representation dated 20.11.2000 is annexed herewith as **Annexure-II**.

4.7 That your applicant begs to state that he has rendered his services as EDDA, Lawpara for more than 5 years and as such he is

Sri Hirish Kalita

entitled to be regularised under the scheme issued by the Department of Post. As per the policy of the Department, a person who renders service for not less than 3 years should be included in the list of EDDAs who are discharged from service for appointment under Rule 20 of the method of Recruitment of DDA read with D.G.P.T letter No. 43-4/77-Pen dated 23.2.1979. In the instant case, the applicant has rendered services for more than 5 years, working for more than 240 days in each year, as required for regularisation of service.

4.8 That in spite of acquiring eligibility and right for being considered for regularisation and in spite of the valued observation of the Hon'ble Tribunal in favour of the applicant in its order dated 10.11.2000 in O.A. No. 126/2000, the respondents did not show any inclination to consider the case of the applicant although there are vacant post of EDDA and other posts in the cadre of D & C under the Senior Superintendent of Post offices.

It is relevant to mention here that the poor applicant has three dependent members in his family including two minor son and daughter and as such the order of termination would lead to civil consequences and put the applicant in extreme difficulty to support to his family. He has become over aged in the meantime for any other Government job.

4.9 That the applicant, finding no other alternative, is approaching the Hon'ble Tribunal for protection of his rights and interests so as to direct the respondents to direct the respondents to consider for his appointment as per observations made by this Hon'ble Tribunal in its judgment and order dated 10.11.2000 in O.A. No. 126/2000.

4.10 That this application is made bona fide and for the cause of justice.

Sri Girish Kalita

5.

Grounds for relief(s) with legal provisions.

5.1

For that the applicant has served the department for more than five years in the post of EDDA and as such the services of the applicant cannot be terminated without any prior notice.

5.2

For that the respondent No.5 was not exonerated from the disciplinary proceeding initiated against him by the respondents.

5.3

For that there is regular vacancies of Group D and C under the Superintendent of Post Offices, Nalbari and as such there is no difficulty in accommodating the respondent No.5 in any other equivalent post.

5.4

For that the applicant has completed 240 days in each calendar year for last five years and as such he is entitled to be regularised in terms of the scheme issued by the Department of post.

5.5

For that, as per the policy of the Respondent Department a person who renders services for not less than three years should be included in the list of EDDA & who are discharged from ^{service} for appointment.

5.6

For that the claim of the applicant gains support from the observations made by the Hon'ble Central Administrative Tribunal in their judgment and order dated 10.11.2000 passed in O.A. No. 126/2000.

Details of remedies exhausted.

That the applicant states that he has no other alternative and other efficacious remedy available to the applicant except

sri hirish Kalit

invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

7. Matters not previously filed or pending with any other court.

The applicant further declares that he had filed an application before this Hon'ble Tribunal vide O.A. No. 126/2000 and the Hon'ble Tribunal was pleased to dismissed the said O.A. on 10.11.2000 with observations for consideration of the case of absorption of the applicant by the respondents. The applicant further declares that no other Writ Petition or Suit regarding the matter in respect of which this application has been made is pending before any court or any other authority or any other Bench of the Tribunal.

8. Reliefs sought for :

Under the facts and circumstances stated above, the applicant most respectfully prays that Your Lordships be pleased to admit this application and further be pleased to grant the following reliefs :

- 8.1 To direct the respondents to comply with the observations made by this Hon'ble Tribunal in their Order dated 10.11.2000 passed in O.A. No. 126/2000.
- 8.2 To direct the respondents to absorb and regularised the services of the applicant in the post of EDDA at Branch office, Lawpara or such other office.
- 8.3 Costs of the application.

Sri Girish Kalith

8.4 Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant humbly prays for the following relief :-

9.1 That the respondents be directed that pendency of this application shall not be a bar for absorption and regularisation of the services of the applicant as prayed for.

10. *****

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I.P.O. No. : 66 788835
 ii) Date of issue : 20/11/2001
 iii) Issued from : G.P.O., Guwahati.
 iv) Payable at : G.P.O., Guwahati.

12. List of enclosures.

As stated in the index.

Sri Girish Kalita

VERIFICATION

I, Shri Girish Kalita, Son of late Krishna Kanta Kalita, aged about 41 years, resident of village Law Para, P.O. Lawpara, district-Nalbari, Assam do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 20th day of November, 2001.

Sri Girish Kalita

Annexure-I

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 126 of 2000

Date of decision : This the 10th day of November 2000

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

Sri Girish Kalita

S/o Sri Krishna Kanta Kalita

Resident of village Law Para

P.O. Law Para

District Nalbari,

Assam.

By Advocates Mr. M. Chanda, Mrs. N.D. Goswami,
Mr. G.N. Chakrabarty and Mr. S.K. Ghosh

.....Applicant

AND - Versus -

1. The Union of India,

Represented by the Secretary to the
Government of India,
Ministry of Communication,
Department of Posts,
New Delhi.

2. The Chief Postmaster General,

Assam Circle,
Meghdoott Bhawan,
Guwahati-7810013. The Superintendent of Post Office,
Nalbari, Assam.4. The Sub Divisional Inspector of
Post Offices, West Sub Division,
Nalbari, Assam.5. Sri Rajat Chandra Medhi,
Resident of Village Lawpara,
P.O. Lawpara,

certified to be
true copy
True Advocate

Sri Girish Kalita

District-Nalbari,

Assam.

By Advocate Mr. B.C. Pathak, Addl. C.G.S.C. Respondents.

ORDER (ORAL)

CHOWDHURY J. (V.C.)

A disciplinary proceeding was initiated against Shri Rajat Chandra Medhi, Extra Departmental Delivery Agent (EDDA), Lawpara Branch Office, Nalbari. To overcome the situation, the respondents provisionally appointed the applicant as EDDA, Lawpara vide Memo No. A1/Lawpara/95 dated 5.4.1995. The aforementioned Rajat Chandra Medhi was taken back into service after completion of the enquiry. The respondents, therefore, by order dated 1.4.2000 terminated the service of the applicant given vide order dated 5.4.1995. Hence this application.

2. Heard Mr. M. Chanda, learned counsel for the applicant who has submitted that strictly in terms of the appointment letter dated 5.4.1995, the respondents acted within their competence in terminating the service of the applicant and appoint the original incumbent. But then, the respondents, as a State, ought not to have abandoned the humane considerations for absorbing him against some post, so much so that the applicant has rendered more than five years service as EDDA. The learned counsel pointed out that in terms of the provisions of the Industrial Law applicable, it was incumbent on the employer to take care of those employees that rendered more than 240 days of service. Mr. Chanda also pointed out to some such welfare measures adopted by the respondents.

3. Mr. B.C. Pathak, learned Addl. C.G.S.C., pointing to the terms of the appointment, on the other hand, submitted that after finalisation of the disciplinary proceeding of Shri Rajat Chandra Medhi he had to be appointed and accordingly the applicant has to give way to Shri Rajat Chandra Medhi. The learned Addl. C.G.S.C. fairly placed the Government policy in this regard for accommodating the EDDA and referred to the relevant circulars.

*Authored to be
true copy
by Advocate*

Sri Girish Kalidé

4. From the foregoing discussion it appears that there is no discernible error or infirmity in terminating the service of the applicant. Therefore the impugned order dated 1.4.2000 cannot be faulted. However, the applicant has put in more than five years of service. As per the policy of the Department a person who renders service not less than three years should be included in the list of EDDAs who are discharged from service for appointment under Rule 20 of the Method of Recruitment of EDDA read with D.G.P.T. letter No. 43-4/77-Pen dated 23.2.1979. Since the applicant has completed more than five years of service in the Department, the respondents shall have to take care of the situation to accommodate him as per the existing rules. Mr. Chanda submitted that there is one such vacant post in Kachua, Mukalmua in Nalbari district wherein the applicant can be accommodated. Mr. Pathak, however, submits that he is not aware of any such vacancy. In my view no such direction is required to be issued for the appointment of the applicant. The entire matter is left to the Postal Authority for consideration of the case of the applicant in conformity with the accepted norms and policy as expeditiously as possible, preferably within three months from the date of receipt of this order.

5. Subject to the above observation, the application is dismissed. No order as to costs.

Sd/- Vice-Chairman

Certified to be
true copy
S. K. Kalita

Sri Girish Kalita

Annexure-II

Dated : 20.11.2000

To
 The Superintendent of Post Offices,
 Nalbari, Assam,

(Through Sub Divisional Inspector (Forest Offices)
 West Sub Division, Nalbari, Assam).

Sub : Prayer for immediate appointment in any suitable post, EDDA, EDMC, in terms of the judgment and order dated 10.11.2000 passed in O.A. No. 126/2000.

Respected Sir,

I like to draw your kind attention on the subject cited above and further beg to state that being highly aggrieved, I approached Hon'ble CAT, Guwahati against the order of termination date 1.4.2000, after rendering five years continuous service as EDDA at Lawpara Branch Office in place of Sri Rajat Ch. Medhi. The Hon'ble Tribunal while delivered Judgment and order dated 10.11.2000 in O.A. 126/2000, it is categorically observed that the undersigned is entitled too be appointed under Rule 20 of the method of recruitment of EDDA read with DGPT letter No. 43-4/77-PEN dated 23.2.1979 and also observed that the appointment should be considered as expeditiously as possible within three months. It is relevant to mention here that one post of EDDA/EDMC is presently lying vacant at Kachva Mulkmua, in Nalbari District. Therefore you are requested to consider my appointment in the said existing vacancy or in any other suitable vacancy as early as possible considering my poor financial condition and also considering the fate of the dependent family members.

A copy of the judgment and order dated 10.11.2000 passed in O.A. No. 126/2000 is enclosed for your ready reference.

Enclo : As stated above

Yours faithfully,

Sd/-

(Girish Kalita)

Vill. Lawpara
 P.O. Lawpara
 Dist. Nalbari, Assam.

*Certified to be
 true copy
 Jan. Advocate*

Sri Girish Kalita

Copy to :

The postmaster General, Assam Circle, Guwahati. You are requested to pass necessary order for any appointment in any existing vacant post of EDDA/EDMC, in terms of judgment and order dated 10.11.2000.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI

Filed by
B. C. Pathak
(B. C. Pathak) 24/6/02
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

O.A. NO. 451 OF 2001

Shri Girish Kalita

..... Applicant.
- Vs -

Union of India & Ors.

..... Respondents

(Written Statements filed for Respondent No.

1, 2 and 3)

The Written Statements of the abovenoted respondents are as follows :

1. That a copy of the O.A. 451/2001 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of all the respondents being similar, they have filed the common written statements as a whole.

2. That the statements made in the application, which are not specifically admitted by the respondents, are hereby denied.

Parawise Reply :-

3. Thaat with regard to the statements made in para 1 the respondents state that the respondent No.3 and 4 have

been making efforts to absorb the applicant in pursuance of the observations made by the Hon'ble Tribunal in it's judgement dated 10.11.2000 in O.A. No. 126/2000 filed by the same applicant keeping conformity with policy and guidelines laid in DG(P) letter No. 43-4/77-Pen dated 23.2.79. But due to non existence of vacancy the applicant could not be absorbed so far (copy of judgement dated 10.11.2000 is annexed as Annexure -1 of the O.A.).

4. That with regard to para 2 to 4.1 of the application, the respondents beg to offer no comments.

5. That with regard to the statements made in para 4.2 the respondents state that the applicant was appointed as Extra Departmental Delivery Agents (in short EDDA) at Lawpara Branch Post Office vide No.A-1/Lawpara/95 dated 5.4.95 of the respondent No.4. The appointment was purely provisional and subject to termination depending on the outcome of disciplinary proceedings initiated against the previous incumbent Shri Rajat Ch. Medhi, who was put-off duty pending disciplinary proceeding. The provisional appointment order clearly stipulated that the appointment of the applicant as such would be terminated in case it is decided to take the previous incumbent back into service after finalisation of the proceeding. Understanding the terms and conditions the applicant accepted the provisional appointment. A copy of the appointment order dated 5.4.95 is enclosed as Annexure - R1.

6. That with regard to the statements made in para 4.3, the respondents state that the applicant joined as EDDA Lawpara on 5.4.95. The disciplinary proceeding against the previous incumbent Shri Rajat Ch. Medhi was finalised with order of exonerating him from the charges and reinstatement in the original post of EDDA Lawpara vide memo No. A2/Lawpara/94-95 dated 31.3.2000 of the respondent No.4 (disciplinary authority). In consequence of the said order Shri Rajat Ch. Medhi was taken back to the post of EDDA Lawpara terminating the provisional appointment of the applicant vide order No. A1/Lawpara/2000 dated 1.4.2000. A copy of the disciplinary order dated 31.3.2000 and termination order dated 1.4.2000 are enclosed as Annexure - R₂ & R₃.

7. That with regard to the statements made in para 4.4 the respondents state that the applicant holding the post of EDDA Lawpara on provisional appointment was liable to vacate the post for Shri Rajat Ch. Medhi in consequence of the later having been exonerated from the charges as per terms and conditions of the provisional appointment order. This action was not unfair or unjust as averted by the applicant. The respondents legally relieved the applicant in pursuance of existing policy and guidelines of the department laid in DG P & T letter No. 43-4/77-Pen dated 18.5.79. A copy of the letter dated 18.5.79 is enclosed as Annexure R₄. The contention of the applicant that Shri Rajat Ch. Medhi was not exonerated is not correct.

8. That with regard to the statements made in para 4.5 the respondents state that applicant has no cause to aggrieve and file the present application as his provisional appointment became liable to be terminated as soon as the previous incumbent was taken back to service on his exoneration from the charges. The applicant was well aware of the terms and conditions of his provisional appointment. Hence, the applicant's contentions saying the termination order as arbitrary, capricious, unjust etc. is unfounded. The Hon'ble Tribunal in It's judgement dated 10.11.2000 in O.A. No. 126/2000 filed by the same applicant on the same issue did not pass any direction to the respondents for the appointment of the applicant in any ED post. The Hon'ble Tribunal instead left the entire matter to the postal authority for consideration of the applicant in conformity with accepted policy of the department. In fact, the applicant could not be accommodated so far due to non-existence of vacancy suitable to the applicant. The issue being decided already by the Hon'ble Tribunal the present O.A. has got no merit and liable to be dismissed.

9. That with regard to the statements made in para 4.6, of the application the respondents stated that no post of EDDA or EEMC was/is lying vacant at Kachua and Mukalmua in Nalbari District. This was informed to the applicant in reply to his representation dated 20.11.2000 by the respondent no.3 vide letter No. A2/Estt/Misc-Corr/ED dated 19.1.2001. A copy of the letter enclosed as Annexure

10. That with regard to the statements made in para 4.7 and 4.8 of the application the respondents stated that the case of the applicant for absorption in ED post is being looked into. He will be accommodated as soon as a vacant post suitable to him becomes available as per guidelines laid in DG P&T letter No. 43-4/77-Pen dated 23.2.1979 and also keeping in view the judgement of the Hon'ble Tribunal in O.A. No. 126/2000.

11. That with regard to the statements made in para 4.9 and 4.10 of the application the respondents stated that there is no cause of the present application as the raised therein stands already decided by the Hon'ble Tribunal in it's judgement dated 10.11.2000 in O.A. No. 126/2000.

12. That with regard to the statements made in para 5.1 of the application the respondents stated that the contention of the applicant that he was terminated without any prior notice is not at all maintainable. The provisional appointment order dearly stipulated that his provisional appointment would be terminated in the event of the previous incumbent being taken back to service. No prior notice for termination was called for.

13. That with regard to the statements made in para 5.2 the respondents stated that Sri Rajat Ch. Das (Respondent No.5) was exonerated from the charges vide order dated 31.3.2000 (Annexure -3). The statement of the applicant is not true.

14. That with regard to the statements made in para 5.3 and 5.4 the respondents stated that the applicant's claim for absorption in group-D and C vacancy is unjustified and beyond the purview of any existing rule and policy of the government. The applicant was governed by EDA (Conduct & Service) Rules, 1964 while he was holding the post of EDDA, Lawpara on provisional appointment. He cannot claim the benefit as a casual labourer on the ~~pleas~~ of completing 240 days of work in a year. This is irrelevant.

15. That with regard to the statements made in para 5.5 and 5.6 of the application the respondents stated that the case of the applicant will be settled as soon as vacancy suitable to him becomes available with the respondents 3 and 4 in terms of policy guidelines of the department and keeping in view the observations of the Hon'ble Tribunal in it's judgement dated 10.11.2000 in O.A. No. 126/2000.

16. That with regard to para 6 & 7 of the application, the respondents beg to offer no comments.

17. That with regard to the statements made in para 8.1 to 8.3 of the application the respondents stated that the reliefs sought for by the applicant are not justified. There is no vacant post of EDDA either at Lawpara or any such other offices at present. No cause has arisen of the present application as the issue has already been decided by the Hon'ble Tribunal in O.A. No.126/2000.

18. That with regard to the statements made in para 9 of the application the respondents stated that the applicant's case has got no merit for the fact that the issue involved has already been decided by the Hon'ble Tribunal on 10.11.2000 in O.A. No.126/2000 in pursuance of which the respondents are looking into the case of the applicant. It is not feasible to fix a target date for giving appointment to the applicant as anticipation of suitable vacancy cannot be made. Under the facts and circumstances of the case, there is no fresh cause of action to proceed with the case and hence the application is liable to be dismissed with cost.

In the premises aforesaid it is therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records, shall further be pleased to dismiss the application with cost.

Verification

VERIFICATION

I, Shri N. Das, presently working as the Superintendent of Post offices, Nalbari Barpeta Division, Nalbari, being competent and duly authorised to sign this verification, do hereby solemnly affirm and state that the statements made in para 1, 2, 3, 4, 8, 10 to 17 and 18 are true to my knowledge and belief, those made in para 5, 6, 7 and 9 being matter of records, ~~are~~ are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this 24th day of June, 2002 at Guwahati.

Niranjan Das,
Deponent.

Superintendent of Post Offices,
Nalbari, Barpeta Division
M.A.R.M. 701339

- 9 -

33

DEPARTMENT OF POSTS :: INDIA
Office of the Sub Divisional Inspector of Post Offices
Nalbari Sub Division :: Nalbari-781335

Memo No. A1/Lawpara/95

Date :: 05-04-95

Whereas Sri Rajat Chandra Medhi EDDA Lawpara B.O. in a/c with Mukalmua S.O. who has been put off from duty pending finalisation of disciplinary proceedings against him and the need has arisen to engage a person to look after the work of EDDA Lawpara. The undersigned has decided to make a provisional appointment to the said post.

The provisional appointment is tenable till the disciplinary proceedings against Sri Rajat Chandra Medhi are finally disposed of and he has exhausted all channels of the departmental appeals and petition etc. and in case it is finally decided not to take Sri Rajat Chandra Medhi back into service.

Sri Girish Kalita son of Sri Krishna Kanta Kalita vill. & Post. Lawpara is offered the provisional appointment to the EDDA post of Lawpara with immediate effect. Sri Kalita should clearly understand that if ever it is decided to take Sri Rajat Ch. Medhi back into service, the provisional appointment will be terminated without notice. The SDI(P) Nalbari reserves the right to terminate the provisional appointment at any time before the period mentioned para 2 above without notice and without assigning any reason.

Sri Girish Kalita shall be governed by the ED Agents (conduct and service) Rules, 1964 and all other rules and orders applicable to ED Agents.

In case the above conditions are acceptable to Sri Girish Kalita he should sign the duplicate copy of this memo and return the same to the undersigned immediately.

Sd/-
(P. C. Baro)
Sub Divisional Inspector of P.Os
Nalbari Sub Division, Nalbari.

Copy to:

1. The Postmaster Nalbari HO for information and n/a.
2. Sri Girish Kalita vill & PO Lawpara
3. The BPM Lawpara
4. SPM Mukalmua
5. Spare.

Sd/-
(P. C. Baro)
Sub Divisional Inspector of P.Os
Nalbari Sub Division, Nalbari.

ANEXURE-D
Divisional B. of Lawpara
District West Sub Division
Postman/PESS

ANEXURE-D

-10-

000 copies or more
and after 1000 copies

for each P.R.

DEPARTMENT OF POSTS

INTEGRAL Branch of
Post Office

Annexure - R 2

Memo No. A2/Lawpara/94-95 dated 24.8.95 at Nalbari Dist. 2000.

34

In this Office Memo of even no dated 24.8.95 proposed to hold an enquiry against Sri. Rajat Ch. Medhi EDDA/Lawpara B.O. under Rule 8 of P&T EDA (Conduct & Service) Rules 1964.

Page

ANNEXURE-I.

Statement of Article of charge framed against Sri. Rajat Ch. Medhi EDDA/Lawpara B.O. in A/C with Mukalmia S.O. (UPD).

ARTICLE-I.

That the said Sri. Rajat Ch. Medhi EDDA Lawpara B.O. (UPD) while working as such remained un Authorised absence from duty W.E.F. 7.8.91 to 14.2.95 i.e. 1288 day.

Thereby the said Sri. Rajat Ch. Medhi violated note below Rule 5 (6) of EDA (Conduct & Service) Rule-1964.

ANNEXURE-II

Statement of imputation of misconduct & misbehaviour in support of the article of charge framed against Sri. Rajat Ch. Medhi EDDA/Lawpara B.O.

ARTICLE-I

Sri. Rajat Ch. Medhi EDDA Lawpara B.O. was granted leave for 95 days W.E.F. 4.5.91 to 6.8.91 vide SDI(P) NLB Memo No. A2/Lawpara dated 9.8.91.

-11-

Sri. Medhi was to join in his duty on 7.8.91. But instead of
joining in his duty he was absent without any authority to

(Sptn Ch)

Thereby said Sri. Medhi violated noted below Rule 5 (6) of EDA
(Conduct & Service) Rules 1964.

The I.O. of the rule 8 case recorded his findings in two Phases.

(1) Sri. Rajat Ch. Medhi EDDA Lawpara B.O. (UPD) Officiate in Departmental posts in different capacities at different S.O.S. from 8.8.91 to 21.10.92. Hence the said period is excluded from un Authorised absence.

(2). Again Sri. Medhi was absent from duties N.E.F. 22/10/92 to 14/2/95.

The charge levelled for un Authorised absence of Sri. Medhi from 8/8/91 to 14/2/95 is to be not proved.

The period mentioned in column (1) from 8.8.91 to 21.10.92 is partially not proved & the period mentioned in column No. (2) for the period 22/10/92 to 14/2/95 partially proved.

The charged Official in his defence statement on I.O.S final report raise question in which term & condition that the person who worked as EDDA Lawpara B.O. for a long period. In the same line of reasoning posting order was essential for him.

I have gone through the I.O.S. final report, charged Official defence statement & other relevant records & documents & comes to the following observation.

(A) I am agree with the finding of I.O. WHICH mentioned in column No. (1).

But I disagree with the finding arrived at in the I.O. in column No. (2) for the following reason which noted below :

(1) Then appointing authorities did not give reasonable opportunities to rejoin of Sri. Rajat Ch. Medhi in the post of EDDA Lawpara after relieving from the post of Postman Baharihat S.O. on 22/10/92.

(ii) In reverse concerned authorities allowed Sri. Manik Ch. Medhi to work as EDDA Lowpara B.O. (in O/C with Mukalmua) as un authorized/un-approved nominee for the period 7-8-91 to 16-2-95 which is in contrary of Rule 5 of EDA (Conduct & Service) Rules 1964. Also then Appointing authorities did not terminate the service of un approved nominee in proper time to make way to rejoin the original ED Official of Lowpara B.O.

O R D E R

I Md. Mammal Haque Laskar SDX PO3 Nalbari (West) Sub-Division, Nalbari & disciplinary authority in the Rule -8 Case of EDDA Lowpara is hereby exonerate Sri. Rajat Ch. Medhi from the charges that levelled against him & reinstate in original post i.e. EDDA Lowpara.

S.d.
EDD Divisional Inspector(Posts)
Nalbari West Sub Division
Nalbari-781333

Copy to :

1. Sri. Rajat Ch. Medhi, Ex-EDDA Lowpara B.O. for information.
2. The Postmaster (HSGI) Nalbari H.O. for information and necessary action.
3. S.POS NLD, for information.
4. O/C.

H.K.K.
EDD Divisional Inspector(Posts)
Nalbari West Sub Division
Nalbari-781333

Appointment of Sub-divisional Inspector with a view to ensure that where there is no need for making the appointment, the same is not effected.

The Annexure is attached hereto.

DEPARTMENT OF POSTS & TELEGRAMS

Memorandum No. A 1/Lawpore/3000 dated 26.6.2000, of Balbari the 1.6.2000.

WHEREAS Sri Girish Kalita Vill. A.P.O. Lawpore Dist. Balbari was engaged to look after the work of BDDA Lawpore B.O. N.B.Y. 06.04.95.

He was given clear understanding that if ever it is decided to take Sri Rojet Ch. Mechi back into service then the provisional appointment issued to him will be terminated without notice.

Now the undersigned come to the decision that Sri Rojet Ch. Mechi BDDA Lawpore (in A/C with Mukulma B.O.) (DPM), should be taken back into service.

Therefore, the provisional appointment issued to Sri Girish Kalita as BDDA Lawpore B.O. vide this Office Memo No. A 1/Lawpore/95 dated 5.6.95 is hereby terminated with immediate effect.

SD/-
Sub Divisional Inspector (Postal)
Balbari West Sub-Division
Balbari-781335

Copy to :

1. The Postmaster (1992) Balbari H.O. for information and necessary action.
2. Sri Girish Kalita BDDA (Prov. App'tt) Lawpore for information.
3. The BDDA Lawpore for information & necessary action.
4. The DPM Mukulma for information.
5. DPM's Balbari for information
6. O/C

SD/-
Sub Divisional Inspector (Postal)
Balbari West Sub-Division
Balbari

(14) **Appointment of ED BPM by Inspectors.**—With a view to ensuring quick administration, it has been decided that where there is no contest for the post of ED BPM, the Inspector of Post Offices can make the appointment in anticipation of the formal approval of the Superintendent of Post Offices. The formal orders in this connection will be issued by the competent Appointing Authority, namely, the Divisional Superintendent. In other cases, where there are rival claimants, the Inspector of Post Offices would be required to obtain the prior approval of the Divisional Superintendent before appointing any person as ED BPM.

[D.G., P. & T., Letter No. 18/3/62-Disc., dated the 30th January, 1965.]

(15) **Provisional appointment of ED Agents.**—It has come to the notice of this office that provisional appointments made to ED posts are being allowed to continue for indefinite periods and when regular appointments are made, the provisionally appointed persons do not readily hand over the charge. The following instructions are issued in this regard:—

- (i) As far as possible, provisional appointments should be avoided. Provisional appointments should not be made to fill the vacancies caused by the retirement of ED Agents. In such cases, the Appointing Authority should take action well in time before the retirement of the incumbent ED Agent, to select a suitable successor.
- (ii) Wherever possible, provisional appointments should be made only for specific periods. The appointed person should be given to understand that the appointment will be terminated on expiry of the specified period and that he will have no claim for regular appointment. Where a new Post Office is opened or where a new post is created or where an ED Agent dies while in service or resigns from his post and it is not possible to make regular appointment immediately, a provisional appointment should be made for a specific period. The offer for appointment should be in the form annexed (Annexure-A).
- (iii) Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalized, a provisional appointment may be made, in the form annexed (Annexure-B). It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment.

Even in cases where an appointment is made to fill the vacancy caused by the dismissal/removal of an ED Agent and the dismissed/removed employee has not exhausted all channels of appeal, the appointment should only be provisional. The offer for appointment should be in the form annexed (Annexure-B).

-15-

39

2. Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' service. In such cases their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G., P. & T., Letter No. 43-4/77-Pen., dated 23-2-1979.

3. These instructions may be brought to the notice of all Appointing Authorities.

[D.G., P. & T., Letter No. 43-4/77-Pen., dated the 18th May, 1979.]

ANNEXURE - A
[*in Duplicate*]

Whereas the post of Extra-Departmental.....(Name of Post and Office of duty) has become vacant/has been newly created and it is not possible to make regular appointment to the said post immediately the.....(Appointing Authority) has decided to make provisional appointment to the said post for a period of (period) from.....to.....or till regular appointment is made, whichever period is shorter.

2. Shri.....(Name and address of the selected person) is offered the provisional appointment. He should clearly understand that the provisional appointment will be terminated when regular appointment is made and he shall have no claim for appointment to any post.

3. The.....(Appointing Authority) also reserves the right to terminate the provisional appointment at any time before the period mentioned in Para. 1 above without notice and without assigning any reason.

4. Shri.....will be governed by the Extra-Departmental Agents (Conduct and Service) Rules, 1964, as amended from time to time and all other rules and orders applicable to Extra-Departmental Agents.

5. In case the above conditions are acceptable to Shri.....(Name of the selected candidate) he should sign the duplicate copy of this memo and return the same to the undersigned immediately.

Appointing Authority

To

Shri.....
.....
.....

ANNEXURE - B
[*in Duplicate*]

Whereas Shri.....(Name and Designation of the ED Agent who has been put off duty/removed/dismissed) has been put off duty pending finalization of disciplinary proceedings and judicial proceedings against him has been removed/dismissed from service and the need has arisen to engage a person to

Annexure - 16. Annexure B

Department of Posts, India

To

Shri Girish Kalita

Vill & Po = Dornpur

Dist = Mukteswar S.C.

Dist = Nalbari

No. A2/ESU/Misc-Cor/ED dtl at Nalbari The
19-1-2001

Subj:- Appointment in any ED Post. Case
of Sri Girish Kalita Vill & Po = Dornpur
Dist = Nalbari

I am directed to inform you that
at present your case can not be considered
as there is no Vacancy at Kachuaapstar
or Mukteswar.

This is for your information

Done
Nalbari Gram Panchayat
ED Office
Supdt. of Posts
Nalbari Gram Panchayat
Nalbari-783325

EDDA

Mail. Cmrs

E.D.