

50/100

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

(SEE RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : 373 / 2002
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant(s) : Man Bahadur

- Vs. -

Respondent(s) : Govt of Assam

Advocate for the Applicant(s) : Mr K.S. Kynjing, R. Suman

Advocate for the Respondent(s) : Mr B.M. Joshi
Case

Notes of the Registry	Date	Order of the Tribunal
<p>This is application in form C. F. for Rs. 50/- deposited vide IP No. <u>598657</u> Dated <u>20/11/02</u></p> <p>By, Registrar</p> <p><i>Shri Satish</i></p> <p><i>One copy sheet</i></p> <p><i>Notice prepared and sent to D/S for info the respondent No 1 to B by Regt.</i></p> <p><i>A.D. [Signature]</i></p> <p><i>D/No 3300 W 3305</i></p> <p><i>Dtd 5/12/02</i></p>	<p>22.11.02</p>	<p>Heard Mr. K.S. Kynjing, learned Sr. counsel for the applicant assisted by Mr. K. Sunar and Mrs. B.M. Joshi and also Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents.</p> <p>The application is admitted. Call for the records. Returnable by four weeks.</p> <p>In the meantime, the respondents are directed to maintain the status quo as on today.</p> <p>List on 24.12.2002 for further orders.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

mb

24.12.02

Mr. B.C. Pathak, learned Addl. C.G.S.C. appearing on behalf of the respondents sought for time for filing written statement. Prayer is allowed. List on 29.1.2003 for written statement.

11

No written statement has been filed

30
28.1.03

K.V. Ghosh
Member

[Signature]
Vice-Chairman

mb

29.1.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S.K. Hajra Administrative Member.

Heard Mr. K.S. Kynjing, learned Sr. counsel for the applicant and also Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents. Mr. Pathak, learned Addl. C.G.S.C. stated he has obtained necessary instruction and he is filing written statement with utmost expedition. Let the matter be posted for orders on 24.2.2003.

In the meantime interim order dated 22.11.2003 shall continue.

Order dtd 29/1/03
Communicated to the
parties counsel.
30
30/1/03

No written statement has been filed

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21.2.03

[Signature]
Member

[Signature]
Vice-Chairman

mb

24.2.2003

The respondents are yet to file reply though time granted. Further four weeks time is allowed to the respondents to file written statement as a last chance. List on 25.3.2003 for written statement and further orders.

In the meantime, interim order dated 22.11.2002 shall continue.

Order dtd 24/2/03
Communicated to
the parties counsel.
30
25/2

10.3.03
was submitted by
applicant Nos. 1, 2, 3, 4 & 5.

[Signature]
Vice-Chairman

mb

3

Notes of the Registry	Date	Order of the Tribunal
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25.3.2003

Written statement has been filed. The case may now be listed for hearing on 8.5.2003. The applicant may file rejoinder, if any, within two weeks from today.

No rejoinder has been filed.

[Signature]
7.5.03

[Signature]
Member

[Signature]
Vice-Chairman

mb

8.5.03

Adjourned. list on 26/5/03 for hearing.

[Signature]

4

Q. A. M. 7

Notes of the Registry

Date

Order of the Tribunal

Cont. 4

8.5.2003

On the prayer of learned counsel for the applicant the case is adjourned. It has been stated that the matter pertains to Single Bench. Office to check and act accordingly for posting the matter in appropriate Bench. Put up the matter again on 18.6.2003 for hearing.

① N/S has been filed by the R. No - 1 to 5.

30
17.6.03

52
Member


Vice-Chairman

mb

17-6-2003

In terms of order dtd. 8.5.2003 the case is checked-up.

The subject matter of the case is relating to the Single Bench.

Laid before the Bench for favour of orders.

18.6.2003 Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr. R.K. Upadhyaya Administrative Member.

up
Put before the appropriate Bench on 11.7.2003 for hearing.



Member


Vice-Chairman

bb

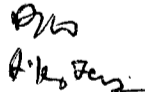
2/30
17.6.03

11.7.2003

11.7.2003

Heard Mr. K.S. Rymjing, learned Counsel for the applicant Mr. B. Chatterjee, Addl. C. & S. C. for the respondents. Hearing concluded.

Judgment reserved.



1/8/2003

Copy of the judgment has been sent to the D/Sec. for issuing the same to the applicant as well as to the Addl. C.S.C. for the Respondt

18.7.2003

Judgment delivered in open Court kept in separate sheets. The application is allowed in terms of the order. No order as to costs.



Vice-Chairman

mb

1/8/2003
R.K. Upadhyaya
17/8/03

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / ~~XXX~~ No. 373 of 2002

DATE OF DECISION 18th July 2003

Shri Mon Bahadur
..... APPLICANT(S).

Mr K.S. Kynjing, Mr K. Sunar and
Ms B.M. Joshi
..... ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

The Union of India and others
..... RESPONDENT(S).


Mr B.C. Pathak, Addl. C.G.S.C.
..... ADVOCATE FOR THE
RESPONDENT(S).

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

THE HON'BLE

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 Ho'ble Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.373 of 2002

Date of decision: This the 18th day of July 2003

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

Shri Mon Bahadur
S/o (L) Bhim Bahadur Chettri
Resident of Rynjah,
Umpling, Shillong.
By Advocates Mr K.S. Kynjing,
Mr K. Sunar and Ms B.M. Joshi.

.....Applicant

- versus -

1. The Union of India, through the Secretary, Ministry of Communication, New Delhi.
2. The Chief Post Master General, N.E. Circle, Meghalaya, Shillong.
3. The Superintendent of Post Offices, Shillong.
4. The Senior Post Master, G.P.O., Shillong.
5. The Post Master B.P.O., Umpling, Shillong.
6. The Assistant Post Master, Umpling Post Office, Shillong.

.....Respondents

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

.....

O R D E R

CHOWDHURY. J. (V.C.)

The subject matter of this application pertains to public employment. A thumb nail sketch leading to the institution of the Q.A. is given hereinbelow:

According to the applicant he had joined in the Office of the respondent No.6- Assistant Post Master, Umpling Branch, Shillong as Mali in the year 1982 at a

monthly salary of Rs.950/- per mansam. He worked as such and from time to time moved the authority for regularisation of his service. He was assured by the respondents for regularisation, but it did not come. Instead by an oral order dated 1.7.2002 the applicant was advised not to attend to his duty in a most arbitrary fashion. Being aggrieved, the applicant moved the Hon'ble Gauhati High Court by way of an application under Article 226 of the Constitution of India seeking for an appropriate writ and/or direction upon the respondents to reinstate him in service and for regularisation of his service. By order dated 19.7.2002 in WP(C) 233(SH)/2002 a notice of motion of motion was issued by the Hon'ble High Court and as an interim measure the respondents were directed to allow the applicant to continue in service till the returnable date. The respondents filed a Misc. Application No.177 (SH)/2002 assailing the maintainability of the Writ Petition in view of the express bar contained in Section 14 of the Administrative Tribunals Act, 1985. Considering the respective pleas the Hon'ble High Court dismissed the petition leaving it to the party to move the Tribunal with his grievances for appropriate relief. The applicant thereafter moved this O.A. before this Tribunal seeking for an appropriate direction as well as for regularisation of his service.

2. In reply to the averments of the applicant, the respondents contended that the applicant was engaged as a part-time contingent staff as and when his service was required. The material part of the averments are quoted

hereinbelow:.....

hereinbelow:

"..... Neither any appointment letter nor engagement offer had ever been issued nor any termination order was issued to the applicant by the respondents. A contingent worker is not a member of the regular establishment and he is not guided by the conditions of service. A contingent worker does not hold a civil post and is not a civil servant. It is also not specified as to how many hours the applicant worked in a day as and when he was asked to work. In absence of any such particular, the claims of the applicant is not tenable in law. As such there is no cause of action to justify any right for filing of the instant application.

In this connection it is pertinent to mention here that as a follow up action to maintain austerity measure and to cut down extra expenditure, the competent authorities of the respondents are reviewing the contingent expenditures from time to time with to view to arrest the unnecessary expenditures or to cut down the same. Similarly, a review was done in which the contingent expenditures of part time contingent worker engaged from time to time in the Rynjah Sub-Office including other such expenditures was found as not justified on the basis of volume of works and requirement. Accordingly, the engagement of any contingent worker by the said office was withdrawn with effect from 1.7.2002. This was done vide order No.A1-12/Rig/corr/Pt-IV/98-99 dt.23.6.2002 issued by the Sr. Supdt. Of Post Offices, Shillong. However, the instruction was given to engage occasional Mali once or twice a month based on actual requirement of the work.

.....
.....

That with regard to the statements made in paragraph 2 of the application, the respondents state that a contingent part time worker is not a member of regular establishment and also not a casual labourer. A contingent part time worker is also not a civil servant holding any civil post. Therefore, he can not come under the jurisdiction of the Hon'ble Tribunal. A contingent part time worker does not come within the meaning of casual labourer and a part time job can not be even converted to full time in absence of the particulars of engagement per day on hourly basis.

.....
.....

That with regard to the statements made in paragraph 4(a), the respondents state that there is no proof or any record maintained by the respondents to show that the applicant had ever was appointed as Mali (IV Grade) from the year 1982 as claimed by the applicant. The respondents also deny the claim that the applicant was paid a monthly salary of Rs.950/. It is pertinent to mention.....



mention here that the respondents had the practice to engage contingent worker on a part time basis on day to day basis as and when such requirement arose. In such cases no record of payment is maintained. The normal practice is to draw some money by the competent authority and to meet such expenditure against contingent payment. The payments are made by contingent expenditure vouchers without indicating any name of any persons. Therefore, the claim of the applicant is baseless and not borne on records of the respondents. The respondents deny the authenticity and genuineness of the so called letter as in Annexure-1 and state that the said letter does not speak anything about the nature of duty or any status of the applicant rather it speaks against the applicant as to how the applicant has falsified his own statements made in the application. The respondents crave the leave of this Hon'ble Tribunal to direct the applicant to produce the original letter dt. 23.5.1997 as in Annexure-1 in the application."

3. I have heard the learned counsel for the parties at length. Mr K.S. Kynjing, the learned Sr. counsel for the applicant assisted by Mr K. Sunar and Ms B.M. Joshi, contended that the respondents acted unlawfully by arbitrarily terminating the applicant by an oral order instead regularising his service. The learned Sr. counsel placed before me numerous Government instructions pertaining to absorption and regularisation of service, more particularly the O.M.No.49014/18/84-Estt.(C) dated 7.5.1985, Department of Posts letter No.65-24/88/SPP.I dated 17.5.1989, the policy regarding engagement of casual workers in Central Government offices following the judgment of the Supreme Court delivered on 17.1.1986 in Surinder Singh and another Vs. Engineer-In-Chief, C.P.W.D. and others, reported in (1986) 1 SCC 639, leading to the formulation of 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989', which was extended from time to time. Referring to the pleadings the learned Sr. counsel for the applicant submitted that the applicant's engagement as a Mali under the respondents since 1982 at a consolidated salary of

Rs.950/-.....

Rs.950/- was not refuted by the respondents. On the other hand the respondents contended that the applicant was engaged as a part time contingent staff. The respondents themselves admitted that no engagement order or appointment order was issued. The respondents also admitted that no termination order was issued by the respondents. The respondents, the learned Sr. counsel for the applicant contended, showed highhanded officiousness and asserted that a contingent worker was not a regular member of the establishment and there is nothing wrong in following the hire and fire policy. The respondents are the custodians of the records and they failed to justify their stand by producing the records. The learned Sr. counsel in course of the hearing placed before me the original communication referred to at Annexure-I. In para 7 of the written statement the respondents even questioned the authenticity and genuineness of Annexure-I dated 23.5.1997 and inslsted for its production by the applicant.

4. I have perused the original of Annexure-I and the same was also shown to Mr B.C. Pathak, learned Addl. C.G.S.C. who appeared on behalf of the respondents. The authenticity of Annexure-I is not in dispute. Annexure-I is only a communication to the applicant indicating his absence from attending his daily duty as a result of which the office compound became dirty and filled with grass. The said communication dated 23.5.1997 was the index of the engagement of the applicant where his absence was showed as unauthorised. However, the respondents continued with the service of the applicant till he was dissuaded to render service as per the oral order which was seemingly admitted by the respondents as to withdrawal of the contingent work. The assertion of the respondents.....

respondents in the written statement as to its engagement of contingent staff on day to day basis as and when such requirement arose runs counter to the fact recorded in the Memo dated 23.5.1997. The said Memo at least reflected that a Mali was to render his duty daily. The assertion made in para 7 to the effect that no record of payment was maintained is difficult to accept. It is a payment made from the public exchequer and as per the normal practice record of payments are to be maintained. the said averment was made by the deponent the Officer-In-Charge, Legal Cell of the Office of the Chief Post Master General, N.E. Circle, Shillong, on the basis of his knowledge. How an Officer Incharge of the Legal Cell could base such statement on the basis of his knowledge was not properly explained.

5. Mr B.C. Pathak, learned Addl. C.G.S.C., submitted that the applicant at best was a contingent worker and therefore, he was not entitled for conferment of any temporary status and for regularisation in terms of the Government of India O.M. The learned Addl. C.G.S.C. asserted that the applicant was a contingent worker utilised from time to time as against exigency of the situation and on the basis of the Government policy such engagement was withdrawn. Therefore, there was no illegality on the part of the respondents.

6. The assertion of the applicant as to his engagement as Mali in the year 1982 at a consolidated salary of Rs.950/- is not seriously contested by the respondents. The respondents, the custodians of the records failed to counter the assertion of the applicant by placing the records. The communication bearing No.B2/Gen/Com/Umpling dated 23.5.1997 issued by the Sub

Post Master.....

M

Poat Master referred the applicant as Mali, Umpling Post Office. The subject was the unauthorised absence. The communication itself indicated the absence of the applicant from duty which affected the administration. By the same communication the applicant was asked to give in writing as to his unwillingness to attend duty in order to enable the authority to make alternative arrangement. The full text of the aforementioned communication is reproduced below:

"To

Shri Mon Bahadur
Mali Umpling P.O.

No.B2/Gen/Com/Umpling

Dated at 23.5.1997

Subject

Unauthorised absence

It is found that you are not coming to do your duty daily even once in a month as a result garden as well a office compound has become dirty and full of grasses.

So you are hereby requested to give written if you are unwilling to come office daily so that we can make another arrangement.

If you are not coming in this office within 3 days it may be treated as your unwillingness to do this duty.

....."

A copy of the above communication was sent to the SSP, Meghalaya Division for information and necessary action. If an appointment letter was not issued nor any termination order, the applicant cannot be blamed. In the written statement the authority described him as a contingent worker, but the same was not substantiated. No records were also produced. The respondents are silent as to the nature and volume of the work rendered by the applicant. The communication dated 23.5.1997, however, insisted for daily attendance. After the communication dated 23.5.1997 the applicant was allowed to work till he was.....

15

was terminated. According to the respondents the engagement was withdrawn with effect from 1.7.2002.

7. The respondents are a part of the Government of India. As per the 1985 policy indicated vide Memo dated 7.5.1985 a duty was cast upon the authority to consider such cases for regular appointment to Group 'D' posts in terms of the general instructions, even those who were recruited otherwise than through the employment exchange. In the Department of Posts there was/is a provision for part time and full time casual labourers who are working on daily wages. A person who rendered service for less than eight hours a day is described as a full time casual labourer and those who are engaged for less than eight hours a day are described as part time casual labourers. There was no provision for contingent labourer as mentioned in the written statement. As per Government of India, Department of Posts Lr.No.65-24/88-SPB.I dated 17.5.1989 all other designations were discontinued. As per the Scheme for granting temporary status there was also provision for readjustment as part time casual labourer as full time casual labourer. The whole object was to do away with unfair labour practice. Continuance of the applicant as Mali since 1982 at a consolidated salary of Rs.950/- without taking any measure of whatsoever manner for regularisation of service is devoid of fairness and justice. The purported act of the respondents in terminating his service in the name of withdrawal instead of regularising his service is not sustainable under the circumstances. It appears that the applicant is nearing the age of superannuation. The impugned act on the part of the respondents for withdrawal of the post of Mali at Rynjah is not supported by any valid reason. At

any.....

rate the doing away with the service of the applicant who rendered service from 1982 without any just cause is not sustainable on the face of Articles 14 and 16 of the Constitution. In a democratic set-up such action on the part of the respondents in not regularising the service of the applicant on the face of the policy is seemingly arbitrary.

8. Even if one accepts the plea of the respondents that the applicant was only a contingent worker even then he remained as a casual labourer as is reflected in the Government of India, Department of Posts letter No.65-24/88-SPB.I dated 17.5.1989. The full text of the said letter is reproduced below:

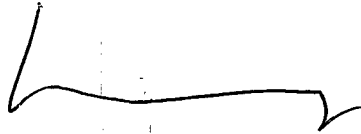
"1. Part-time and Full-time Casual Labourers-

It is hereby clarified that all daily wagers working in Post Offices or in RMS Offices or in Administrative Offices or PSDs/MMS under different designations (mazdoor, casual labourer, contingent paid staff, daily wager, daily-rated mazdoor, outsider) are to be treated as casual labourers. Those casual labourers who are engaged for a period of notless than 8 hours a day should be described as full time casual labourers. Those casual labourers who are engaged for a period of less than 8 hours a day should be described as part-time casual labourers. All other designations should be discontinued.

Substitutes engaged against absentees should not be designated casual labourer. For purposes of recruitment to Group 'D' posts, substitutes should be considered only when casual labourers are not available. That is, substitutes will rank last in priority, but will be above outsiders. In other words, the following priority should be observed-

- (i)
- (ii)
- (iii) Casual labourers (full time or part-time. For purpose of computation of eligible service, half of the service rendered as a part-time casual labourer should be taken into account. That is, if a part-time casual labourer has served for 480 days in a period of 2 years he will be treated, for purposes of recruitment, to have completed one year of service as full time casual labourer).


.....
.....
....."



9. As per the norms mentioned above at Clause (iii), the applicant even if he be treated as a part-time casual labourer who had rendered more than 480 days of service in the period of years, he was to be treated for the purpose of recruitment as if he had completed one year of service as full time casual labourer. There was no justification in the set of circumstances for denying at least the benefit of the Scheme of granting temporary status and regularisation. No reasons are discernible for not conferring the benefit of the 1989 Scheme by conferring temporary status and regularisation of service in spite of the fact that the applicant was rendering service under the respondents since 1982.

10. For all the reasons set out above the respondents are directed to consider the case of the applicant for conferment of temporary status and consequent regularisation in the light of the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989 as per law. The respondents are directed to complete the exercise as expeditiously as possible, preferably within three months from the date of receipt of the order. Till completion of the exercise the interim measure which was continuing as per the order passed by the High Court shall continue.

10. The application is allowed to the extent indicated. In the facts and circumstances of the case there shall, however, be no order as to costs.


(D. N. CHOWDHURY)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI.

IN O.A.NO.373/2002

Shri Mon Bahadur ... APPLICANT

- Vrs -

Union of India & Others ... RESPONDENTS.

LIST OF DATES/NOTES

In 1982 :- Appointed as a Mali, Anx-I, Page-9 will
show

- i. for salary of Rs.950/- p.m.
- ii. worked for 20 years without adverse remarks.
- iii. Now aged 51 years.
- iv. Approached the Respondents/Superior for regularisation of service with great hope for regularisation for 20 years.

On 1st July, 2002 :- Verbally directed to stop working any more without any notice and opportunity of being heard.

18th July, 2002 :- Approached the Hon'ble High Court by W.P.(C) No.233(SH)02 and after hearing the Parties interim Order was passed out the Applicant was allowed to continue to work.
Anx-II & III, Pages - 10 - 17.

19th Aug. 2002 :- Respondents filed Misc. Case No.177(S)02 challenging the Jurisdiction point stating that the Applicant here is holding a Civil Post and this Tribunal is the forum.

Anx-IV, Page 21 - 24.

Sept. 2002 :- Show Cause by the Writ Petitioner/present Applicant. ... Anx - V, Page - 25 - 27.


12th Sept.2002 :- Order of the Hon'ble High Court passed in Misc. Case No.177(SH)02.

Anx-VI, Page - 28 - 33.

Nov. 2002 :- Instant application

Feb. 2003 :- Written Statement by Respondents 1 to 5.

Dated Guwahati,
The 11st July, 2003.


(Mr. K. Sunar),
Advocate.

Typed Copy of
Annexure - VI Page 28.

DISTRICT :: EAST KHASI HILLS.

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR:
TRIPURA: MIZORAM AND ARUNACHAL PRADESH).

(SHILLONG BENCH)

W.P.(C) NO. 1072 (SH) OF 2002

Shri Mon Bahadur

... PETITIONER

- Versus -

Union of India
& Others

... RESPONDENTS.

B_E_F_O_R_E

THE HON'BLE MR. JUSTICE AMITAVA ROY.

12.9.2002

The Petitioner had approached this Court seeking to invoke its jurisdiction under Article 226 of the Constitution of India for an appropriate Writ to direct the Respondents to reinstate him in service and thereafter regularise the same. This Court, by order dated 19.7.2002 had issued Notice of Motion and in the interim directed that the Petitioner should be allowed to continue in service till the next returnable date.

The Respondents have filed, in the meantime an application contending that the Writ Petition is not maintainable in law in view of the express bar contained in Section-14 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Act).

.....2/-

I have heard Mr.K.S.Kynjing, Learned Senior Counsel for the Petitioner assisted by Mr.K.Sunar, Advocate and Mr.S.C.Shyam, Learned Addl.CGSC for the Respondents,

In the Writ Petition, the Petitioner has claimed that he joined the Office of the Postmaster, GPO, Umpling, Shillong, as a Mali in the year - 1982 and since then has been continuing in the said post, drawing a sum of Rs.950/- per month as salary. In view of the fact that in the meantime he had put in about 20 years of service as claimed by him. He approached the appropriate authorities for regularisation thereof whereupon the Respondent No.5 on 1.7.2002 verbally asked him not to attend to his duties without however affording any opportunity to him to represent against the said action.

In the Affidavit filed by the Respondents, they have denied that the Petitioner has been in regular employment of the Department as claimed by him. According to them, he had been a contingent part time worker as Mali in Rynjah Sub-Post Office for sometime on a pay of Rs.950/- per month and that, keeping in view the claim registered by him in the Writ Petition, this Court has no jurisdiction to entertain the same in view of a specific bar under Section 14 of the Act.

In the affidavit filed by the Petitioner to the said application, while reiterating that he is holding a Civil Post under the Respondents, he has contended that the alternative remedy under the Act is not a bar for this Court to exercise its jurisdiction under Article 226 of the Constitution of India as the Impugned action has been taken in violation of the principles of natural justice.

I have heard the Learned Counsel for the parties in support of their respective stands taken in the pleadings.

According to Mr. SC. Shyam, Learned Addl. CGSC, the materials available on record clearly indicates that the issues are covered by Section 14 of the Act and therefore, the jurisdiction of this Court under Article 226 of the Constitution of India is excluded thereby. As against this, Mr. K. S. Kynjing, Learned Senior Counsel for the Petitioner has submitted that as the Impugned action of the Respondents has been in complete violation of the principles of natural justice, this Court has the jurisdiction to exercise its power of judicial review under the Constitution.

On a perusal of the pleadings of the parties and assuming that the claim by the Petitioner with regard to his service is correct, it is evidently clear that this case is covered by Section 14(1) (b)(ii) of the Act. The said provision of the Act.

The said provision of the act confers exclusive jurisdiction on the Central Administrative Tribunal to deal with such matters. Section 28 and 29 of the Act are also pointers in the said direction. In a very recent decision of the Apex Court reported in AIR 2002 Sc.1295 :
KENDRIYA VIDYALAYA SANGATHAN & ORS, APPELLANTS
- Vrs - DR.RD.VISHWAKARMA & ORS, RESPONDENTS, a similar question arose. The Appellants therein were the employees of Kendriya Vidyalaya and they approached the High Court of Jammu & Kashmir with an application under Article - 226 of the Constitution of India relating to some disputes involving their service conditions. Applications were filed on behalf of the Sangathan to transfer the Writ Petitions to the Concerned Central Administrative Tribunal on the ground that it was the said Tribunal only which had the jurisdiction to decide the disputes. The High Court dismissed the applications which brought the matter before the Apex Court. After noticing that the case was covered by Section 14(1)(b)(iii) of the Act, the Apex Court held that the High Court had erred in law in directly entertaining the Writ Petitions. In coming to the said conclusion, the Apex Court recalled its earlier decision reported in : L.CHANDRA KUMARI - Versus - UNION OF INDIA AND ORS : AIR 1997 SC 1125, wherein it had observed that the Tribunals set up under the Act would

the Act would continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted and that it will not be open for the litigants to directly approach the High Court even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

In view of the clear and categorical pronouncement of the Apex Court on the issue in hand, I am constrained to hold that the present application under Article 226 of the Constitution of India in the present facts and circumstances, cannot be entertained. As admittedly, this application has been filed claiming benefits relating to service conditions relatable to a Civil Post as claimed by the Petitioner, having regard to the language used in Section 29 of the Act, I find no scope to transfer the proceeding to the file of the Learned Tribunal, Guwahati as well. It would be however open for the Petitioner to approach the Learned Tribunal with his grievances as expressed in the present Writ Petition and seek appropriate relief therefrom.

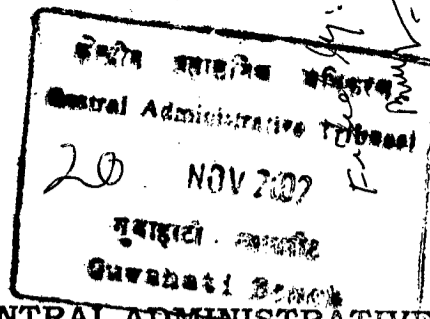
At this juncture, Mr.K.S.Kynjing, Learned Senior Counsel for the Petitioner submitted, that while disposing of this Writ Petition, an appropriate direction be issued to the Respondents

to the Respondents to allow the Petitioner to continue in service till he approaches the Learned Tribunal for redress. I am afraid, having taken the view that this Court has ~~xxx~~ no jurisdiction to entertain the Writ Petition, it would not be permissible to issue any such direction as prayed for. It would be up to the Respondents in their wisdom to take appropriate action in the matter.

In light of the above discussion, the Writ Petition stands dismissed. The Misc. Case, as a corollary, stands allowed.

Sd/-

Judge.



28 Mr. B. M. Joshi
Advocate, Shillong
20/11/02

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE,
GAUHATI BENCH, GAUHATI.

ORIGINAL APPLICATION NO. 373 OF 2002

Shri. Mon Bahadur

..... Applicant.

....VERSUS...

1. The Union of India,
Through the Secretary,
Ministry of Posts & Telegraph, *Communication*
New Delhi.
2. The Chief Post Master General,
N.E. Circle, Meghalaya,
Shillong.
3. The Superintendent of Post Offices,
Shillong.
4. The Senior Post Master, G.P.O.,
Shillong.
5. The Post Master,
B.P.O., Umpling,
Shillong.
6. The Assistant Post Master,
Umpling Post Office,
Shillong.

..... Respondents.

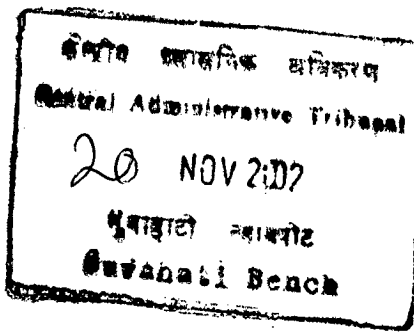
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Filed by:

P. M. Joshi
Mr. B. M. Joshi
Advocate, Shillong.

Dated Gauhati,
The ___ November, 2002.



Filed by
M. B. Chilling
Advocate

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE,
TRIBUNAL, GAUHATI BENCH, GAUHATI.

ORIGINAL APPLICATION NO 373 OF 2002

Shri. Mon Bahadur
S/o (L) Bhim Bahadur Chettri
R/o Rynjah, Umpling, Shillong.

..... Applicant.

....VERSUS...

1. The Union of India,
Through the Secretary,
Ministry of Posts & Telegraph, *communication*
New Delhi.
2. The Chief Post Master General,
N.E. Circle, Meghalaya,
Shillong.
3. The Superintendent of Post Offices,
Shillong.
4. The Senior Post Master, G.P.O.,
Shillong.
5. The Post Master,
B.P.O., Umpling,
Shillong.
6. The Assistant Post Master,
Umpling Post Office,
Shillong.

..... Respondents.

1. **Details of Application :**

Particulars of the order against which the application is made :

- i) The Application is made against the office verbal order on 1st July 2002 and 27th Sept.2002 by the Assistant Post Master, Umpling Post Office, Shillong, whereby the service of the Applicant was terminated.

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Contd...2/-

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ii) And the order dt. 19.7.2002 passed by the Hon'ble High Court in W.P. (C) No. 233 (SH) 2002.

(Copy of the High Court Order dated 19.7.2002 is enclosed herewith).

2. **Jurisdiction of the Tribunal :**

That the applicant declares that the subject matter of the order against service of the applicant which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

3. **Limitation :**

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

4. **Facts of the Case :**

(a) That the applicant joined Office of the Respondent, Assistant Post Master, Umpling Branch Shillong as Mali (IVth Grade) in the year 1982 as his monthly salary was Rs. 950/- per month and since then he was working to the best of his all sincerity and efforts to the satisfaction of the concerned Department.

(Copy of the letter dated 23.5.97 is enclosed herewith to show the service of the applicant and marked as Annexure - I).

(b) That thereafter, the applicant approached the Superior of the Department from time to time for regularisation of his service, so as to avail all the service benefits, since he has already worked for more than 20 (twenty) years without any break or adverse remarks in the service whatsoever and at present his age is 51 years.

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Contd...3/-

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(c) That inspite of the repeated approach and repeated assurance, the Superiors nothing had been done for, either regularization of the service of the applicant nor any benefit were given to him, very strangely, the Superior of the Department on 1st July, 2002 verbally directed the applicant to stop working any more without affording any opportunity of being heard and/or without any show cause notice, and also without considering his past long service of 20 (twenty) years.

(d) That the applicant has no other documents except the letter dated 23.5.97 as the Respondents never issue any letter officially so long even after the interim order of the Hon'ble High Court dated 19.7.2002 passed in W.P. (C) 233 (SH) 2002 and there are some correspondence from the Respondent No.1 in favour of the applicant but the same was never either shown or given to the applicant.

5. **Grounds for Relief with Legal Provisions:**

- (a) For that the applicant already rendered 20 (twenty) years service to the department and he has crossed the age limit for any other appointment / job etc.
- (b) That the applicant is denied with justice and his case is totally neglected by the department, as it could have easily accommodate the applicant in any manner instead of putting him in the street very rudely without considering the fact that he has family and children.

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- (c) That the applicant has no other efficacious alternative remedy but to file the instant petition before this Hon'ble Tribunal for appropriate relief.
- (d) That the Superior of the concerned department taking undue advantage of the illiteracy and financial conditions of the applicant verbally directed him to stop attending his duty w.e.f. 1st July 2002.
- (e) That being aggrieved by the said verbal Order dated 1st July, 2002 of the Superior approached the Hon'ble Gauhati High Court, Shillong Bench, by a Writ Pétition (C) No. 233 (SH) 2002, and Hon'ble High Court after hearing the parties passed the interim Order dated 19.7.2002 directing the Respondent "Considering the fact, the petitioner has served more than 20 years in the Department, his terminations has thrown the petitioner and his family out of gear, I am of the opinion that an interim order is called for. The petitioner shall be allowed to continue in service till the next returnable date. Mr Dey shall highlight this Court about the actual position by producing records", and the said order was duly communicated to the Respondent by Letter dated 22nd July 2002.

(Writ Petition dated 19th July, 2002 and the copy of the Interim Order dated 19.7.2002 and a copy of the letter dated 23.5.97 are enclosed herewith and marked as Annexure - II, III respectively)

Contd...5/-

Handwritten signature in Bengali script.

= 5 =

- (f) That accordingly the applicant was allowed to work again but without any respond to the said letter and was also allowed to put his signature everyday to show his attending the duty.
- (g) That thereafter, the Respondent filed a Misc. Case No. 177 (SH) 2002 dated 19.8.2002 challenging the maintainability of the Writ Petition admitting that the applicant is holding a civil post and this Tribunal is the appropriate Forum for the redressal of the grievances U/S 14 of the Central Administrative Tribunal and the Hon'ble High Court agreeing the contention of the Department dismissed of the Writ petition as well as the Misc. Case by Order dated 12/9/2002.

(Copy of the Misc. Case No. 177 (SH) 2002, Show Cause and the Final Order dated 12.9.2002 are enclosed herewith and marked as Annexure -IV, V & VI respectively)

6. **Details of Remedies Exhausted:-**

- (a) It is an admitted fact that the applicant was very much in service and holding the post of IV Grade (Mali), since 1982.
- (b) That for almost more than 20 years of service he was not regularized in the service and was never given any service benefits except the salary of Rs. 950/- per month.
- (c) That at the time of termination though verbal he was not given any show cause notice and/or he was not given the opportunity of being heard.

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(d) That though the Hon'ble High Court was pleased to dismiss the Writ Petition on the ground of alternative remedy but interim Order was not touched and is still operative but your humble Applicant has again been asked to stop coming to the work from 27th September, 2002 verbally without any written Order against the principles of natural justice is applicable.

7. **Matter not previously filed or pending with any other Court :**

i) The Writ Petition under Article 226 was filed before the Hon'ble High Court, Shillong Bench in respect of the same matter and the Hon'ble High Court by Order dated 19.2.2002 dismissed the same on the point of jurisdiction. Hence this Petition.

8. **Relief Sought :**

Under the facts and circumstances of the case, it is humbly prayed that the Hon'ble Tribunal would graciously be pleased to :

- i) Admit this Petition.
- ii) call for records.
- iii) issue notice calling upon the Respondent to show cause as to why the verbal order of termination dated 1st July, 2002 and 27th September, 2002 of the Applicant be not quash and set aside, directing the Respondent to reinstate back the Applicant in service, and to regularize his long service; and

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- iv) the causes being shown and hearing the parties be pleased to direct the Respondents to reinstate the Applicant and regularize his service.

9. **Interim Order :**

Pending disposal of this petition the Respondent may be directed to allow to continue his duty.

10. **Any other relief :**

And/or pass any other appropriate order considering the nature of the case, 20 (twenty) years long service and for which for act of your kindness, the Applicant as in duty bound shall ever pray.

11. Application is filed through Advocate. *Sr. K.S. Kynjing, Krishna Suman, Ms. B.M. Joshi,*
12. Particulars of I.P.O. No- *76598657*
enclosed in original.
13. List of Enclosures as stated in the Index.

मंगलदास

Humble Applicant

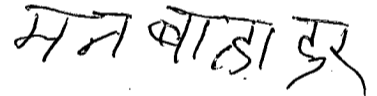
Dated Gauhati,

The 20th November, 2002.

= 8 =

VERIFICATION

I, Shri. Mon Bahadur, son of (L) Bhim Bahadur Chettri, aged about 51 years, was working as IVth Grade (Mali) in Postal Department, Umpling, Rynjah, Shillong, resident of Umpling, Rynjah, Shillong-6, Meghalaya do hereby verify that the contents of paragraphs 1 to 7 are true to the best of my knowledge and belief, those made in paragraphs 8, 9, 10 - are my humble submission before this Hon'ble Tribunal and that I have not suppressed any material facts.

Date : 20.11.2002Place : Guwahati.

Signature of Applicant.

TYPED Copy

Cerr - 22

DEPARTMENT OF POSTS, INDIA

From

To

Shri Mon Bahadur

Mali Umpling P.O.

No. B2/Gen/Com/Umpling

Dated at 23.5.1997

Subject

Unauthorised absence

It is found that you are not coming to do your duty daily even once in a month as a result garden as well a office compound has become dirty and full of grasses.

So you are hereby requested to give written if you are unwilling to come office daily so that we can make another arrangement.

If you are not coming in this office within 3 days it may be treated as your unwillingness to do this duty.

Copy to

SSP/Meghalaya Dn

for information and necessary action

Sd/-

23.5.97

Certified to be true copy

Usharal 15/11/02

Mr. K. Senar, Advocate

DISTRICT : EAST KHASI HILLS.

IN THE GAUHATI HIGH COURT.

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

SHILLONG BENCH

W. P. (C) No. ²³³ (SH) of 2002.

To

The Hon'ble Shri P.P. Neolakar, B.A., LL.B.
the Chief Justice of the Gauhati High Court
and His Lordship's companion other Justices
of the said Hon'ble Gauhati High Court.

IN THE MATTER OF _____ :

An application under Article 226 of
the Constitution of India for issuance
of an appropriate writ/direction.

- AND -

IN THE MATTER OF _____ :

Office Memo No. B²/Gen/Com/Umpling dated
23.5.97

- AND -

IN THE MATTER OF _____ :

Shri Mon Bahadur, Mali,

s/o (L) Bhim Bahadur Chettri,
R/O Rynjah, Umpling, Shillong-6.

----- PETITIONER

contd..2...

Attested
Magistrate
Advocate

- Versus -

1. The Union of India,
through the Secretary,
Ministry of Posts & Telegraph,
New Delhi.
2. The Chief Post Master General,
N.E. Circle, Meghalaya,
Shillong.
3. The Superintendent of Post Offices,
Shillong.
4. The Senior Post Master, G.P.O.,
Shillong.
5. The Post Master,
B.P.O., Umpling,
Shillong.
6. The Assistant Post Master,
Umpling Post Office,
Shillong.

----- RESPONDENTS -----

The humble Petition of the Petitioner named above;
MOST RESPECTFULLY SHEWETH :-

1. That your humble petitioner is a bonafide citizen of India and a permanent resident of Umpling, Nynjah, Shillong, District East Khasi Hills, Meghalaya.
2. That the Petitioner is a married man having his wife, two sons and three daughters who are residing with your humble petitioner.
3. That the said children of the Petitioner are all

contd., 3..

are all students of the College and Schools. And the Petitioner's wife is purely a housewife and has no source of income of her own, and all the family of the Petitioner fully dependent on him for their studies and livelihood.

4. That your humble Petitioner was initially joined office of the Respondent No. 5, the Department of Postal India, Umpling Branch, Shillong as a Mali, in the year 1982, since then he was working to the best of his all sincerity and efforts to the satisfaction of the concerned department for a sum of Rs. 950/- per month as his monthly salary.

5. That once the Petitioner could not attend the office for few days due to some unavoidable problems in the family, the Respondent No. 5 issued a registered Office Memo No. B²/Gen/Com/Umpling dated 3.5.97, requesting to give written, if the petitioner is unwilling to attend office daily, so that the Respondent could make another arrangement, but immediately after receiving the said notice the Petitioner approached the department explaining his reason for non attendance in the office/ duty, and the department considering the explanation and situation allowed your humble Petitioner to continue his duty as a Mali without any break, objections etc.

(A copy of the letter dated 23.5.1997 is annexed herewith and marked as Annexure-I)

6. That thereafter, the petitioner approached the

contd.,.,.,.,.

- 4 -

the Petitioner approached the Superior of the department from time to time for regularisation of his service, so as to avail all the service benefits, since he had already worked for more than 20 (twenty) years without any break in the service whatsoever and at present his age is 51 years.

7. That inspite of the repeated approach and repeated assurance to the superiors, nothing had been done for, either regularisation of the service of your humble Petitioner nor any benefits were given to him.

8. That the Petitioner worked for 20 (twenty) years continuously and his service was duly utilised by the Respondents and instead of regularising his service and giving the benefits, very strangely the Respondent No.5 on 1st July, 2002, verbally directed the Petitioner to stop working any more without affording any opportunity of being heard and/or without any show cause notice, and also without considering his past long service of 20(twenty) years.

9. That your humble Petitioner has no other documents except the said letter dated 23.5.97 (Annexure- I) and as far as your Petitioner remembers once some letter from New Delhi was sent regarding his service, most probably of the service. The copy of the same was not supplied to the Petitioner but learnt this from the other colleague employees in the department and has no full knowledge of the same.

contd...5...

10. That the said illegal, arbitrary and malafide action of the Respondents have caused great prejudiced and hardship to the life of the Petitioner, as well as his entire family members.

11. That your humble Petitioner has already rendered 20 (twenty) years service to the department, and he has crossed the age limit for any other appointment/ job etc.

12. That the petitioner is denied with justice and his case is totally neglected by the Respondents, as the Respondents could have ~~at~~ easily accommodated your petitioner in any manner instead of putting him in the street very rudely.

13. That the petitioner has no other efficacious alternative remedy but to file the instant writ petition before this Hon'ble Court.

14. That the Respondents taking undue advantage of the illittracy and financial conditions of the petitioner, verbally directed him to stop attending his duty w.e.f. 1st July, 2002 and this being the case of the Petitioner it is respectfully submitted that the instant case needs immediate intervention by the Hon'ble Court.

15. That this petition is made bonafide and for the ends of justice.

In the premises, it is humbly prayed that Your Lordship would graciously be pleased to admit this petition, call for

contd...6..

u

call for the records, issue rule, calling upon the Respondents to show cause as to why an appropriate Rule be not issued, directing the Respondents to reinstate back the petitioner in service, and to regularise his long service, and after the causes being shown and hearing the parties make the rule absolute.

Pending disposal of this petition the Respondents may be directed to allow to continue his duty.

And/or pass any other appropriate order, considering the nature of the case of 20 years long service and for which act of your kindness, the petitioner as in duty bound shall ever pray.

Dated, Shillong
the 18th 2002.

Humble Petitioner.

Affidavit--7..

42

I, Shri Mon Bahadur, son of (Late) Bhim Bahadur Chettri, aged about 51 years, resident of Rynjah, Umpling, Shillong- 6, District East Khasi Hills, Meghalaya do hereby solemnly affirm and declare on oath as follows :-

1. That I am the Petitioner of this instant petition and am well conversant with the facts and circumstances of this case.

2. That the statements made in paragraphs

are true to the best of my knowledge, and belief and those made in paragraph are true to the best of my knowledge and information and the rests are my humble submission before this Hon'ble High Court and I sign this Affidavit on this the day of July, 2002, at Shillong.

Identified by me :

(Miss B. M. Joshi),
Advocate, Shillong.

DEPARTMENT

भारतीय डाक विभाग
DEPARTMENT OF POSTS, INDIA

From

To

Shri. Mon Bahadur
Mali Umpling P.O.

क्र. संख्या
No.

दिनांक
Dated at

B-1 Gen/cor/umpling dt 23/5/97

विषय
Subject

Unauthorized absence

It is found that you are not coming to do your duty daily even once in a month. as a result garden as well as office compound has become dirty and full of grasses.

So you are hereby requested to give written if you are unwilling to come office daily so that we can make another arrangement.

If you are not coming in this office within 3 days it may be treated as your unwillingness to do this duty.

copy to
SSP/Meghalaya Dh
for information + n/a.

WB
23/5/97

Date of application for the copy.	Date fixed for notifying the requisite number of copies.	Date of delivery of the requisite stamps and fees.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
19/7/02	19/7/02	19/7/02	19/7/02	19/7/02

18

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND,
MEGHALAYA, MANIPUR AND TRIPURA)
SHILLONG BENCH
CIVIL APPELLATE SIDE**

Appeal from no. P/6 No 53302 of 2002

Civil Rule

Shri Mon Bahadur

Appellant

Petitioner

Versus

Respondent

Opposite-Party

Union of India & ors.

For Appellant Mr. K.S. Gogoi

For Petitioner Ms. D. N. Das

For Respondent Mr. P. Das

For Opposite-Party



Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures.

Shri Mon Bahadur, Mall,
s/o (L) Shri Bahadur Chettri,
R/C Nyalat, Laping, Shillong-6.

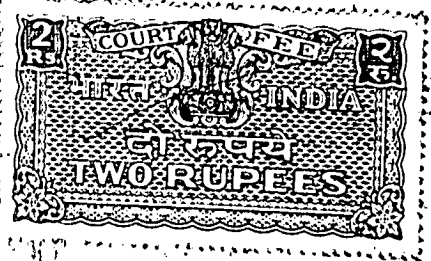


Attested
Manginbari Jem
Advocate.

PETITIONER
contd..2..

- Versis -

1. The Union of India,
through the Secretary,
Ministry of Posts & Telegraph,
New Delhi.
2. The Chief Post Master General,
N.E. Circle, Meghalaya,
Shillong.
3. The Superintendent of Post Offices,
Shillong.
4. The Senior Post Master, G.P.O.,
Shillong.
5. The Post Master,
B.P.O., Uapling,
Shillong.
6. The Assistant Post Master,
Uapling Post Office,
Shillong.



----- RESPONDENTS -----

F
R
C

Noting by Office of Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
1	2	3	4

B E F O R E

THE HON'BLE MR JUSTICE B LAMARE

19.7.2002

Heard Mr KS Kynjing, learned Sr.counsel assisted by Mr K Sunar, learned counsel for the petitioner and Mr P Dey, Addl CGSC, learned counsel for the respondents.

Let a Notice of Motion issue calling upon the respondents to show cause as to why a Rule should not be issued as prayed for; and or why such further or other order or orders should not be passed as to this Court may seem fit and proper.

Notice is made returnable within four weeks.

Mr Dey, learned Addl CGSC accepts notice on behalf of all the respondents, no further notice is called for.

The petitioner shall supply extra copies of the petition to Mr Dey.

From perusal of the petition, it shows that the petitioner has served for about 20 years as Mail in the Department of Postal & Telegram at Umpling Branch, Shillong. He was terminated without termination order or notice on 1.7.2002.

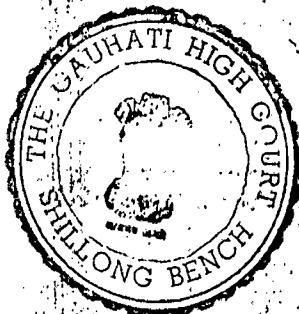
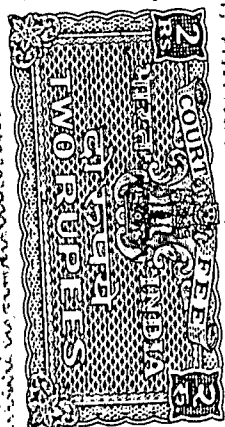
Considering the fact, the petitioner has served more than 20 years in the Department, his termination has thrown the petitioner and his family out of gear, I am of the opinion that an interim order is called for. The petitioner shall be allowed to continue in service till the next returnable date. Mr Dey shall highlight this Court about the actual position by producing records.

List the case after four weeks.

Certified to be true copy

K S Kynjing
 Asst. Secy. (A)
 Gauhati High Court
 Shillong Bench

Typed By.....
 Read By.....
 Compared By.....



DISTRICT : EAST KHASI HILLS

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

SHILLONG BENCH

MISC. CASE NO. 177 (SH) 2002

IN W P. (C) No. 233 (SH) of 2002

To,

The Hon'ble Shri. P.P. Neolekar, B.A., LL.B.,
the Chief Justice of the Gauhati High Court
and His Lordship's Companion Justice of the
said Hon'ble High Court.

IN THE MATTER OF :-

A Petition under Section 14
of the Central Administrative
Tribunal Act, 1985.

- A N D -

IN THE MATTER OF :-

Vacation of the Interim Order
dtd. 19-7-2002, passed by his
Hon'ble Court in the writ
petition No. 233 (SH) 2002.

- A N D -

IN THE MATTER OF :-

1. Union of India
represented by Secretary,
Ministry of Post & Govt. of India

*Attested
Kampanon Jha
Advocate*

- 2. The Chief Post Master General
N.E. Circle, Shillong, Meghalaya.
- 3. The Senior Superintendent of
Post Offices, Shillong.
- 4. The Senior Post Master,
G.P.O., Shillong.

.... PETITIONERS/RESPONDENTS

- Versus -

Shri Mon Bahadur
S/O Late Mon Bahadur Chetri,
R/O Rynjah, Shillong.

.... OPP. PARTY/PETITIONER

Humble petition of the above named
Petitioners.

MOST RESPECTFULLY SHEWETH :-

1. That the Opp. party/writ Petitioner has preferred the W.P. (C) No. 233(SH) of 2002, praying inter alia for the issuance of direction to re-instate and regularise the services of the writ Petitioner and this Hon'ble Court while issuing notice of motion vide the interim Order DTD. 19-7-2002 was pleased to hold that " the Petitioner shall be allowed to continue in service till the next returnable date".
2. That your Petitioner would respectfully submit that as per records, the Opp. Party/writ Petitioner was never in the regular employment of the Petitioners but was a contingent part time worker as Mali in the Rynjah Sub-Post Office for sometime on payment of Rs. 950/- per month for his said part-time work. And as such the Opp. party/Petitioner is not entitled to any remedy prayed for in the said writ petition.

.....P/S

3. That apart from the untenability of the contention of the Opp. party/writ Petitioner, the original jurisdiction of this Hon'ble Court Under Article 226 of the Constitution of India, has been excluded Under Section 14 of the Central Administrative Tribunal Act 1985 to adjudicate in all service matters of the Central Govt. Employees, holding a Civil Post and as such the writ petition is liable to be rejected being not maintainable under law.
4. That the Opp. party/writ Petitioner claims that he is in the service of the Postal Department as such he is holding a Civil post under the Union of India and the grievances of the writ petitioner being relating to his advice matter, the same fall within the exclusive jurisdiction of the Learned Central Administrative Tribunal and hence this petition.
5. That this petition is made bonafide and for the ends of justice.

In the above premises, most respectfully, it is prayed that your Lordship would graciously be pleased to admit this petition, issue notice on the Opp. party/Writ Petitioner to show cause as to why

the Writ Petition should not be rejected in view of the exclusion of jurisdiction of this Hon'ble Court under Section 14 of the Central Administrative Tribunal Act and after the causes being shown, if any, and after hearing the parties be pleased to reject the writ petition and in the interim be pleased to vacate the interim Order dtd.

19-7-2002 and be pleased to pass such other orders/ orders as your Lordship may deem fit and proper and for that act of kindness your Petitioner as in duty bound shall ever pray.

HUMBLE PETITIONER.

A F F I D A V I T

I, Shri A.R. Bhowmik, S/O Late N. K. Bhowmik, the charged about 56 Years, by occupation - Govt. Service residing at G.P.O. Complex, Shillong, East Khasi Hills, District, Meghalaya do hereby solemnly affirm and state as follows :-

- 1. That I am the Sr. Superintendent of Post Offices, Meghalaya Division, Shillong and I am well acquainted with the facts and circumstances of the case and I am competent to swear this Affidavit on behalf of the Petitioners.
- 2. That the statements made in paragraphs 1 to 6 are true to my information and knowledge and the rests are my humble submission before the Hon'ble Court and I sign this Affidavit this day of 19th day of August 2002, at Shillong.

Identified by :-
Advocate, Shillong.

[Signature]
DEFENDENT. 19/8/02

(A. P. Bhowmik)
Sr. Supdt. of Post Offices
Meghalaya Division
Shillong- 793001

Annexure-⁵¹ V

—25—

DISTRICT : EAST KHASI HILLS

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
MIZORAM, TRIPURA, AND ARUNACHAL PRADESH)

SHILLONG BENCH

Misc Case No. (SH) of 2002

In W.P. (C) No. 233 (SH) of 2002

IN THE MATTER OF :-

1. Union of India &
Others Petitioners

- Versus -

Shri Mon Bahadur, Opp. Party

- And -

IN THE MATTER OF :-

Show Cause against the Petition
dated 19.8.02.

I, Shri Mon Bahadur, son of (Late) Bhim Bahadur Chettri, aged about 51 years, resident of Rynjah, Umting, Shillong-6, District East Khasi Hills, Meghalaya do hereby solemnly affirm and declare on oath as follows :-

1. That the statements made in paragraph 1 of the Petition is admitted being a matter of record.
2. That the averment made in paragraph 2 of the instant Petition is not correct as because it is quite contrary to the statement in paragraph 3 and 4 of the said Petition.

Attested
Mangish The
Advocate

...2/-

- 52
—26—
3. That in reply to the statements made in paragraph 3 & 4 of the Petition is devoid of any merit and I humbly submit that admittedly I am well in service and is holding a civil post and as far as the alternative remedy under the C.A.T is no bar, as there are continuous Violation of principles of natural justice to the Writ Petitioner, and is entitle to get relief by way of Writ under Articles 226 of the Constitution of India.
 4. That I respectfully submit that the amount of salary of Rs. 950/- (Rupees Nine Hundred fifty) only paid to me is not sufficient and I am doing other works, such as carrying water, to the people etc in my free times, to meet financial scarcity for survival of the family, education of the Children etc, and the Respondent should not have any problems with it.
 5. That the Petitioner/Respondent at no point of time has communicated anything concerning my service, its regularisation or removal and this Hon'ble Court at the motion stage, was pleased to pass the interim Order to meet the end of justice.
 6. That I again submit that alternative remedy is no bar, Writ Petition is maintainable as because it is a question of Violation of principles of natural Justice and other equitable right under the Constitution. Moreover, going for alternative remedy under the C.A.T. will be expensive affair to a poor and layman like Writ Petitioner.

7. That the statements made in paragraphs 1 to 6 are true to the best of my knowledge, information and belief.

I verify the same on this the _____ day of September, 2002 at Shillong.

Identified by :-

Prasad

Ms B M Joshi
Advocate, Shillong.

DEPONENT

*Review of ()
is arranged by
Advocate
Tou B. C. Shyam.
Advocate
519102*

Copy	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery the requisite number of stamps and folios.	Date on which the copy was ready for delivery.	Date on which the copy is handed over to the Applicant.
13-9-2002	13-9-2002	13-9-2002	13-9-2002	13-9-2002

- 28 -

IN THE GAUHATI HIGH COURT
 (THE HIGH COURT OF ASSAM, NAGALAND,
 MEGHALAYA, MANIPUR AND TRIPURA)
 SHILLONG BENCH.
 CIVIL APPELLATE SIDE

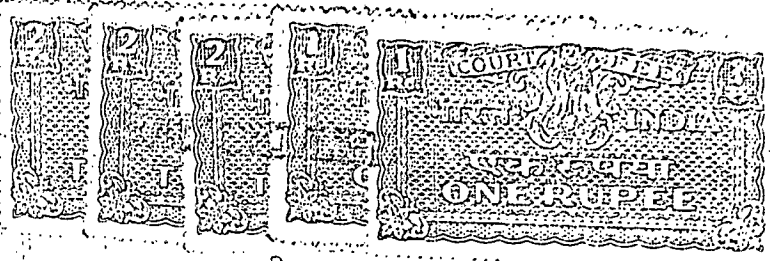
Case No. 17769/2002

Appeal from MS. P. 41 No. 23309/2002 of 20

Civil Rule
 Appealant
 Versus
 Respondent
 Opposite Party

For Appellant M. S. C. Sharma and Co. Sec.
 For Respondent M. S. C. Sharma and Co. Sec.
 Opposite Party M. S. C. Sharma and Co. Sec.

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
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Attested
Majidul Haq
Advocate

Union of India,
represented by Secretary
Ministry of Post & Telegraphs

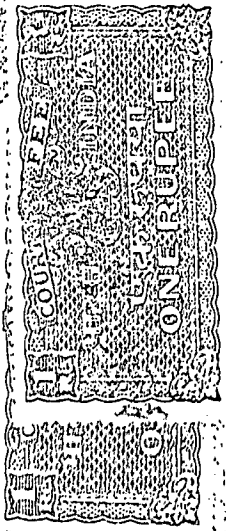
- 2. The Chief Post Master General
N.E. Circle, Shillong, Meghalaya
- 3. The Senior Superintendent of
Post Offices, Shillong.
- 4. The Senior Post Master,
B.P.O., Shillong.

.... PETITIONERS/RESPONDENTS

- VERSUS -

Shri Man Bahadur
S/O Late Shri Bahadur Chetri,
R/O Rymah, Shillong.

.... OP.PARTY/PETITIONER



Noting by Office of Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
1	2	3	4

B E F O R E

THE HON'BLE MR JUSTICE AMITAVA ROY

12.9.2002

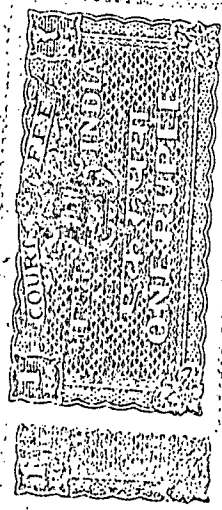
The petitioner had approached this Court seeking to invoke its jurisdiction under Article 226 of the Constitution of India for an appropriate writ to direct the respondents to reinstate him in service and thereafter regularise the same. This Court, by order dated 19.7.2002 had issued notice of Motion and in the interim directed that the petitioner should be allowed to continue in service till the next returnable date.

The respondents have filed, in the meantime, an application contending that the writ petition is not maintainable in law in view of the express bar contained in Section 14 of the Administrative Tribunals Act, 1985 (hereafter referred to as 'the Act').

I have heard Mr KS Kynjing, learned senior counsel for the petitioner, assisted by Mr K Sunar, advocate and Mr SC Bhyam, learned Addl CGSC for the respondents.

In the writ petition, the petitioner has claimed that he joined the office of the Postmaster, JPO, Dapling, Shillong, as a Mail in the year 1982 and since then has been continuing in the said post, drawing a sum of Rs.950/- as salary. In view of the fact that in the meantime he had put in about 20 years of service as claimed by him, he approached the appropriate authorities for regularisation thereof, whereupon the respondent No.5 on 1.7.2002 verbally asked him not to attend to his duties without however affording any opportunity to him to represent against the said action.

In the affidavit filed by the respondents, they have denied that the petitioner has been in regular employment of the department as claimed by him. According to them, he had been a contingent part-time worker as Mail in Rynlah Subpost Office for some time on a pay of



Filed by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
	2	3	4

12.9.2002. contd.

- 2 -

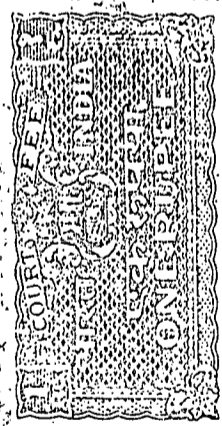
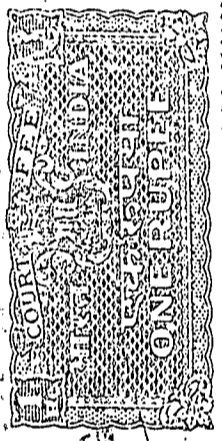
Rs. 950/-pm and that, keeping in view the claim registered by him in the writ petition, this Court has no jurisdiction to entertain the same in view of a specific bar under Section 14 of the Act.

In the affidavit filed by the petitioner to the said application, while reiterating that he is holding a civil post under the respondents, he has contended that the alternative remedy under the Act is not a bar for this Court to exercise its jurisdiction under Article 226 of the Constitution of India as the impugned action has been taken in violation of the principles of natural justice.

I have heard the learned counsel for the parties in support of their respective stand taken in the pleadings.

According to Mr SC Bhatia, learned Addl CJC, the material available on record clearly indicates that the issues are covered by Section 14 of the Act and therefore, the jurisdiction of this Court under Article 226 of the Constitution of India is excluded thereby. As against this, Mr KS Rajing, learned senior counsel for the petitioner has submitted that as the impugned action of the respondents has been in complete violation of the principles of natural justice, this Court has the jurisdiction to exercise its power of judicial review under the Constitution.

On a perusal of the pleadings of the parties and assuming that the claim by the petitioner with regard to his service is correct, it is evidently clear that this case is covered by Section 14(1)(b)(ii) of the Act. The said provision of the Act confers exclusive jurisdiction on the Central Administrative Tribunal to deal with such matters. Section 23 and 29 of the Act are also pointed in the said direction. In a very recent decision of the Apex Court reported in AIR 2002 SC 1295 : KINDEVIYA VIDYALAYA SANGATHAN & ORS, APPELLANTS -v- DR RD VISHNAKARNA & ORS, RESPONDENTS, a similar question arose. The appellants therein were the employees



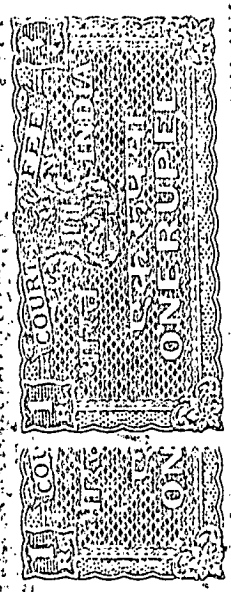
by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
1	2	3	4

1.9.2002 contd.

- 3 -

of Kendriya Vidyalaya and they approached the High Court of Jammu & Kashmir with an application under Article 226 of the Constitution of India relating to some disputes involving their service conditions. Applications were filed on behalf of the Sangathan to transfer the writ petitions to the concerned Central Administrative Tribunal on the ground that it was the said Tribunal only which had the jurisdiction to decide the disputes. The High Court dismissed the applications which brought the matter before the Apex Court. After noticing that the case was covered by Section 14(1)(b)(iii) of the Act, the Apex Court held that the High Court had erred in law in directly entertaining the writ petitions. In coming to the said conclusion, the Apex Court recalled its earlier decision reported in : I CHANDRA KUMARI -v- UNION OF INDIA AND ORS ; AIR 1997 SC 1125, wherein it had observed that the Tribunals set up under the Act would continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted and that it will not be open for the litigants to directly approach the High Court even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

In view of the clear and categorical pronouncement of the Apex Court on the issue in hand, I was constrained to hold that the present application under Article 226 of the Constitution of India in the facts and circumstances, cannot be entertained. As admitted, this application has been filed claiming benefits relating to service conditions relating to a civil post as claimed by the petitioner, having regard to the language used in Section 29 of the Act, I find no scope to transfer the proceeding to the file of the learned Tribunal, Guwahati as well. It would be however open for the petitioner to approach the learned Tribunal with his grievances as regards the present writ petition and seek appropriate relief therefrom.



Noting by Office of Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
	2	3	4

12.9.2002 contd.

- 4 -

At this juncture, Mr KZS Kynjing, learned senior counsel for the petitioner submitted, that while disposing of this writ petition, an appropriate direction be issued to the respondents to allow the petitioner to continue in service till he approaches the learned Tribunal for redress. I am afraid, having taken the view that this Court has no jurisdiction to entertain the writ petition, it would not be permissible to issue any such direction as prayed for. It would be up to the respondents in their wisdom to take appropriate action in the matter.

In light of the above discussion, the writ petition stands dismissed. The Misc. Case, as a corollary, stands allowed.

Sd/- Anurupa Roy
JUDGE

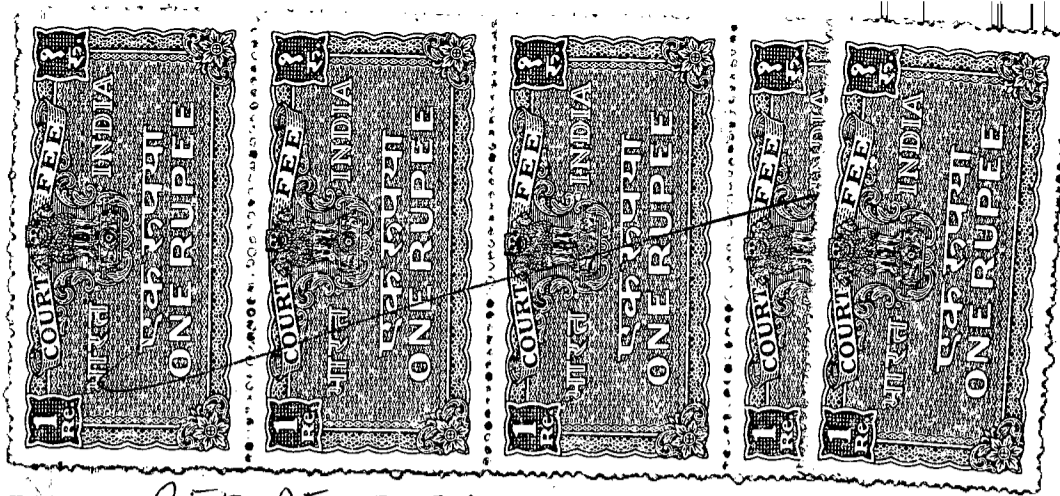
mdk

Certified to be true copy.

Arunima 13/09/02
Deputy Registrar,
Gauhati High Court
Phillong Bench

Typed By.....
Read By.....
Compared By.....





766

IN THE BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE

AT

Original Application NO. 373/2000 of 2002

Shri N'on Bahadur - - - Applicant

VERSUS

Union of India & 5, others - - - Respondents

VAKALATNAMA

I/WE the undersigned of Umpling Kyngjoo, Shillong do hereby nominate and appoint

by Mr. K.S. Kyngjoo, Senior Advocate assisted by Mr. K. Sunar & Ms. B.M. Joshi - Advocates

advocate(s), and those named below, who has/have signed here-unto indicating his/her/their acceptance of such appointment, as my/our true and lawful attorney(s) in this matter and all proceedings arising out of it, to represent me/us and on my/our behalf, to appear, plead, and act before the Honourable Court, and to sign, verify and present pleadings, to deposit and/or to do all and whatsoever that may be expedient to be done in the premises, before the Honourable Court, AND I/WE do hereby agree to ratify and confirm all and whatsoever that may be lawfully done by virtue hereof, AND FURTHER I/WE do hereby bind myself/ourself to pay the stipulated fees of my/our said attorney(s) in advance failing which he/she/they shall be free to refrain from appearing and/or acting on my/our behalf, AND IN TESTIMONY WHEREOF I/WE do set and subscribe my/our hand(s) hereunto this the 2002 at

- | | | |
|-----------------------------|-----------------------------|-------------------------------|
| 1. Shri B. Dutta | 25. Shri E.S. Jyrwa | 49. Shri Starlight Dkhar |
| 2. Shri N.M. Lahiri | 26. Shri N.A. Lyngdoh | 50. Shri H.B. Rai |
| 3. Shri H. Ahmed | 27. Shri P.K. Shah | 51. Shri S.B. Endow |
| 4. Shri B.N. Choudhury | 28. Mrs R.A. Begum | 52. Shri O.S. Ajar |
| 5. Shri M.Y. Ciddikie | 29. Shri S.P.S. Schdave | 53. Shri B.C. Das |
| 6. Shri P.C. Biswas | 30. Shri B.M. Roy | 54. Shri V.K. Jindal |
| 7. Shri L. Marbaniang | 31. Shri A.S. Ciddique | 55. Shri Sajjan Kumar Tharad |
| 8. Shri B.P. Dutta | 32. Shri P. Pyrtuh | 56. Mrs Tshering Yangi Gulia |
| 9. Shri A.D. Massar | 33. Shri Lohit R. Das | 57. Shri Ranabir Choudhury |
| 10. Shri G.S. Massar | 34. Shri C.P. Upadhyay | 58. Shri Jang Bahadur Rai |
| 11. Shri S.R. Sen | 35. Shri V.S. Khongjoh | 59. Shri Ranjit Sen |
| 12. Shri B.B. Dutta | 36. Shri W.H.D. Syngkon | 60. Shri Haniwell Chyne |
| 13. Shri S.R. Nongrum | 37. Shri G. Bhattacharjee | 61. Shri H.W. Nongbet |
| 14. Shri M.P. Tharad | 38. Shri B.P. Marnagar | 62. Shri D.K.D. Choudhury |
| 15. Shri J.N. Sharma | 39. Shri Subhas C. Shyam | 63. Shri Bimalendu K.D. Roy |
| 16. Shri R.N. Mahanta | 40. Shri J.K. Bhattacharjee | 64. Shri Biswajit Endow |
| 17. Shri N.R. Laitphlang | 41. Shri Embot Pyrbot | 65. Mrs Jyotsna Dutta Roy |
| 18. Shri A. Massar | 42. Shri K.S. Kyngjoo | 66. Shri Chandramoni Adhikari |
| 19. Shri K.R. Mchera | 43. Shri I. Lamare | 67. Shri Odeo Valentine Ladia |
| 20. Shri P.N. Bhuyan | 44. Shri M.Z. Ahmed | 68. Shri Mohan Massar |
| 21. Mrs Minati Sharma | 45. Shri Ednellson Diengdoh | Diengdoh |
| 22. Shri N.K. Dev | 46. Shri J.P. Bhattacharjee | 69. Shri Ranjit Kar |
| 23. Shri L.D. Choudhury | 47. Shri J. Kishore Sharma | 70. Shri Stephen Sun |
| 24. Shri A.S. Bhattacharjee | 48. Shri P.C. Das | 71. Shri R.R. Khongji |

61

72. Shri K. Rahman
 73. Shri Nirmal Dey
 74. Shri Parimal Chandra Das
 75. Smti J.W. Kharir
 76. Shri Shriprakash Mahanta
 77. Shri Premjit Singh Kapoor
 78. Shri Aibor Singh
 Nongkinrih
 79. Shri Devendra Singh Viridi
 80. Shri K. Lalhluna
 81. Shri S.K. Deb Purkayastha
 82. Shri Nirendra Kr. Dey
 83. Smti L. Malngiang
 84. Miss Kalpana Das
 85. Shri D.P. Chakraborty
 86. Shri D.S. Lyngdoh
 87. Shri Uday Rimsu
 88. Shri Vivanstone G.K. Kynta
 89. Shri Weable Ch. Sangma
 90. Shri J.S. Khongmalai
 91. Shri Deepak Kr. Choudhury
 92. Shri Helestone Nongkhlaw
 93. Smti Swati Bhattacharjee
 94. Shri T.R. Lyngdoh
 95. Shri Harmeet Singh
 96. Shri Jahanara Begum
 97. Shri Sailaja Ranjan Das
 98. Shri Maurice G. Lyngdoh
 99. Shri H.R. Nongruun
 100. Shri B.N. Dutta
 101. Shri Subhrangshu S. Das
 102. Shri Moniram Mochari
 103. Shri Sukumar Das
 104. Shri N.B. Dutta
 105. Shri Nyamjok Konoyak
 106. Shri Vijoy Chetri Khurana
 107. Shri B.R. Laso
 108. Shri K. Tariang
 109. Shri Pascal Malngiang
 110. Shri H.R. Nath
 111. Shri S. Chakrawarty
 112. Shri P. Chalkia
 113. Shri Binu Hazarika
 114. Shri S.K. Das Choudhury
 115. Shri H. Suchiang
 116. Shri P.K. Bajaj
 117. Shri P. Dutta Bujar Baruah
 118. Shri Yangkahao Z. Shimary
 119. Shri J.R. Nath
 120. Shri A. Alam Khan
 121. Md. Basiruddin Ahmed
 122. Shri T.B. Chetri
 123. Shri S.D. Chetia
 124. Shri S.T. laso
 125. Miss B. Rajkhowa
 126. Shri S. Esh Choudhury
 127. Miss Usha K. Singh

128. Md. T. Rehman
 129. Smti Poonam Yadav
 130. Shri T. Diengdoh
 131. Shri P. Aonak
 132. Shri B.M. Lyngdoh
 133. Shri B.R. Purkayastha
 134. Shri B.M. lanong
 135. Shri Subhas Gupta
 136. Mrs M.D. Phukan
 137. Shri K. Marbianang
 138. Shri M.M. Sharma
 139. Shri R. Debnath
 140. Shri S. Choudhury
 141. Shri Jagadish Ch. Dey
 142. Shri R.B. Pradhan
 143. Mrs Sima Bhattacharjee
 144. Shri Edward Dkhar
 145. Shri R.N. Singh
 146. M.F. Qureshi Ashrafi
 147. Shri Shiv Prasad Sharma
 148. Md.-A.H. Hazarika
 ✓ 149. Shri Krishna Sunar
 150. Shri Love Son Thangal
 151. Ms. Anuradha Paul
 152. Shri P'tosh De
 153. Shri Bishwadcep
 Bhattacharjee
 154. Shri Parambir Singh
 SehDave
 155. Shri Rohit Arora
 156. Shri N.Diles Chullai
 157. Smti Ashima Roy
 Choudhury
 158. Shri Sentilong Changkija
 ✓ 159. Smti Bishnu Maya Joshi
 160. Shri Lurshai Wahlang
 161. Smti Bijulata Das
 162. Smti Meena Kharkongor
 163. Shri Ram Nath
 164. Shri Deepak Bhattacharjee
 165. Shri Manoj kr. Dey
 166. Shri Gopal Ch. Das
 167. Shri Edlison Roy
 Ryntathiang
 168. Shri J.I. Borbhuyan
 169. Shri Bhanu Senapati
 170. Smti Kalpana Roy
 171. Shri A. Dutta Choudhury
 172. Smti Debjani Das
 Purkayastha
 173. Shri Thaneshwar Kanhle
 174. Smti Margret Kurbah
 175. Shri S. Waldang
 176. Shri I.C.Jha
 177. Mrs H.M. Phukan
 178. Mr. E. Lyngdoh
 179. Shri N.K. Arjun

180. Shri S.N. Singh
 181. Shri Sunil Kr. Agarwal
 182. Shri K.T. Harianal
 183. Shri C.M. Marthinsamata
 184. Shri Sudip Paul Choudhury
 185. Shri H.S. Thangkhiew
 186. Shri Dilip Kr. Thapa
 187. Shri Arjun Mukhopadhyay
 188. Miss Mamata Chakraborty
 189. Shri Anil Kr. Agarwala
 190. T.T. Zthanasangha
 191. Shri Tabris Jalal Ahmed
 192. S.I. Usman
 193. Shri Nirmal Kr. Goldsmith
 194. Mrs Sudipa Bhattacharjee
 195. Shri rabi Gurung
 196. Shri Jashodir Sh.
 Choudhury
 197. Mrs Deeya Singh Rathore
 198. Shri Sukumar Dutta
 199. Miss Gauri Purkayastha
 200. Shri EstodatWelchync
 201. Shri Lesley Khyricm
 202. Miss Builder Shylla
 203. Shri Purushottam Upadhyay
 204. Shri Rajiv Nath
 205. Miss Mona Wahllang
 206. Miss Vijayalakshmi Dutta
 207. Shri Peter Shallam
 208. Shri P.K. Borah
 209. Md. Ayub Khan
 210. Md. Noor Md. Mansuri
 211. Shri Khalid Khan
 212. Shri Subir Sen
 213. Shri B.M. Roy Dolori
 214. Shri C.H. Mawlong
 215. Shri R. Rocky
 216. Shri Soumen Sengupta
 217. Shri S.N. Marak
 218. Shri Deba K.N. Kharshiing
 219. Smti Rama Debnath
 220. Smti La-i-kynti
 221. Shri Umaday
 Bhattacharjee
 222. Shri Testwell kharir
 223. Shri Mahendra Gurung
 224. Smti Shisha Balari Lai
 Thama
 226. Shri keshav Ch. Gautam
 227. Shri Yogendra Prasad
 Choudhury
 228. Shri Tushar Chanda
 229. Miss Apreen Begum
 230. Shri Lamandec Lyngdoh
 231. Ms Nanjusha Shri

Received VAKALATNAMA from the Executant
 Satisfied and accepted

ADVOCATE:

and accepted

ADVOCATE(S)

Mr. K. S. Kynging Swadrochi

Assisted by:

1. [Signature]
2. [Signature]
3. Nanjusha Shri

Executant

मम काताइर

NOTICE

From : Ms. Manjusha Jha ; Advocate .

To, The Senior C.G.S.C, CAT, Gumahali.

IN THE MATTER OF

O.A NO — 1002

Sri Mow Bahadur .

- Vs - .. Applicant

Union of India & Ors

.. Respondents

Sir,

Please find herewith a copy of the above original application for your necessary use and information . kindly acknowledge receipt .

Copy received :

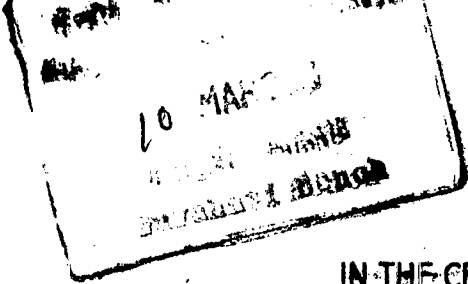
Prof. Bahadur

- 21/11/02

Yours faithfully

Ms. Manjusha Jha
Advocate

20/11/02



34

1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI.

Filed by:
Prakash
(S. C. P. T. 10137055)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench - Guwahati

IN O.A. NO. 373/2002

Shri Mon Bahadur

... Applicant

-Vs-

Union of India & Others

... Respondents

(The written statements filed by the respondents no. 1,2 3,4 and 5).

The written statements of the above noted respondents are as follows :

1. That a copy of the O.A. No.373/2002 (referred to as the "Application") has been served on the respondents. The respondents have gone through the same and understood contents thereof. The interest of the respondents being common and similar, a written statement common for all of them has been filed in the case.

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

3. That with regard to the statements made in the paragraph 1(i), the answering respondents state that there can not be two verbal orders to terminate the so called service of the applicant as alleged. In fact, the applicant was engaged as a part time contingent staff as and when his services were required. Neither any appointment letter nor engagement offer had ever been issued nor any termination order was issued to the applicant by the respondents. A contingent worker is not a member of the regular establishment and he is not guided by the conditions of service. A

-35- 64

contingent worker does not hold a civil post and is not a civil servant. It is also not specified as to how many hours the applicant worked in a day as and when he was asked to work. In absence of any such particular, the claims of the applicant is not tenable in law. As such there is no cause of action to justify any right for filing of the instant application.

In this connection it is pertinent to mention here that as a follow up action to maintain austerity measure and to cut down extra expenditures, the competent authorities of the respondents are reviewing the contingent expenditures from time to time with to view to arrest the unnecessary expenditures or to cut down the same. Similarly, a review was done in which the contingent expenditures of part time contingent worker engaged from time to time in the Rynjah Sub-Office including other such expenditures was found as not justified on the basis of volume of works and requirement. Accordingly, the engagement of any contingent worker by the said office was withdrawn with effect from 1.7.2002. This was done vide order No.A1-12/Rlg/corr/Pt-IV/98-99 dt.23.6.2002 issued by the Sr. Supdt. Of Post Offices, Shillong. However, instruction was given to engage occasional Mali once or twice a month based on actual requirement of the work.

The copy of the said order dt. 28.6.2002 is annexed as the Annexure-R.1.

4. That with regard to the statements made in paragraph 1(ii), the respondents state that while the W.P.(C) No.233(SH) 2002 was finally dismissed on the ground of jurisdiction (not on merit), the initial order passed by the Hon'ble High Court on 19.7.2002 becomes non-est. Hence, any observation made by the Hon'ble High Court without hearing the respondents can not be treated as a piece of evidence nor it can supercede the final order passed by the same court.

5. [That with regard to the statements made in paragraph 2 of the application, the respondents state that a contingent part time worker is not a member of regular establishment and also not a casual labourer. A contingent part time worker is also not a civil servant holding any civil post. Therefore, he can not come under the jurisdiction of this Hon'ble Tribunal. A contingent part time worker does not come within the meaning of casual labourer and a part time job can not be even converted to full time in absence of the particulars of engagement per day on hourly basis.]

6. That with regard to the statements made in paragraph 3, the respondents state that the application is barred by limitation and is liable to be dismissed on that ground alone.

[7. That with regard to the statements made in paragraph 4(a), the respondents state that there is no proof or any record maintained by the respondents to show that the applicant had ever was appointed as Mali (IV Grade) from the year 1982 as claimed by the applicant. The respondents also deny the claim that the applicant was paid a monthly salary of Rs.950/- . It is pertinent to mention here that the respondents had the practice to engage contingent worker on a part time basis on day to day basis as and when such requirement arose. In such cases no record of payment is maintained. The normal practice is to draw some money by the competent authority and to meet such expenditure against contingent payment. The payments are made by contingent expenditure vouchers without indicating any name of any persons. Therefore, the claim of the applicant is baseless and not borne on records of the respondents. The respondents deny the authenticity and genuineness of the so called letter as in Annexure-1 and state that the said letter does not speak anything about the nature of duty or any status of the applicant rather it speaks against the applicant as to how the applicant has falsified his own statements made in the application. The respondents crave the leave of this Hon'ble Tribunal to direct the

applicant to produce the original letter dt. 23.5.1997 as in Annexure-1 in the application. 1

R 8. That with regard to the statement made in paragraph 4(b), the respondents state that the claim of the petitioner that he rendered 20 years service to the department is completely baseless. Because different persons were engaged on different occasions to have the same work on the basis of requirement. These statements are also contradictory to the statements made in paragraph 4(a) above. There is another claim for the same job benefit, received by the Department from another person Shri Krishna Bahadur Chetri vide his application dt. 25.11.93 who has also claimed for the same benefit. As such, the claim of the applicant is baseless and not tenable in law.

The copy of the application dt. 25.11.93 is annexed as Annexure-R2.

9. That with regard to the statements made in paragraph 4(c), the respondents state that the petitioner did not approach to any authority of the department for remedy of any of his grievances so far. There is no scope of serving any notice or show cause as the persons against contingent workers are not borne in regular establishment against any civil post.

10. That with regard to the statements made in paragraph 4(d), the respondents state that the question of sending any letter to the petitioner does not arise at all in view of facts narrated in the foregoing paras. By the order dt. 19.7.2002 passed by the Hon'ble High Court in case W.P.(C) 233(SH) 2002, the respondents were directed to allow the applicant to work till finalisation of the case. The applicant was allowed to do so. The applicant is not supposed to be supplied with any copy of judgment etc. as

there is no such instruction from any channel of communication with the Sr. Supdt. Of PO's.


11. That with regard to the statements made in paragraph 5(a) to 5(g), the respondents state that the grounds shown by the applicant to substantiate his claim are not tenable in law, more particularly, in view of the facts and circumstances of the case. The order that was passed by the Hon'ble Gauhati High Court, Shillong Bench has also become non-est for the fact that the said Hon'ble High Court has ultimately dismissed the writ petition and upheld the contention of the respondents. Therefore, the application is liable to be dismissed with cost.
12. That with regard to the statements made in paragraph 6, the respondents state that the applicant has misconceived the requirement to be supplied under the head "Details of remedies existed" and has supplied some unnecessary information. The respondents however state that the applicant did not exhaust any remedy available to him to represent the respondents at any point of time.
13. That with regard to the statements made in paragraph 7 of the application, the respondents have no comment to offer.
14. That with regard to the statements made in paragraph 8 and 9 of the application, the respondents state that in view of the facts and circumstances of the case and provisions of law whatever applicable, the applicant is not entitle to any relive whatsoever, as prayed for, and as such 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 also be pleased to dismiss the petition with cost.

VERIFICATION

I, Shri Anubha Raton Boruah at present
 working as Officer-in-charge (Legal Cell) in the office
 of the Chief Postmaster General, Shillong being duly
 authorized and competent to sign this verification, do hereby solemnly
 affirmed and state that the statements made in paragraph 1, 2, 4 to 7, 9
 to 14 that are true to my knowledge and belief, and those of made in
 paragraph 3 and 8 being matter of records, are true to my
 information derived therefrom and the rest of my humble submission before
 the this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on 10th day of ^{March} February, 2003 at
 Guwahati.

DEPONENT. 
 Officer In-charge (Legal Cell)
 O/o the Chief Postmaster General
 N.E. Circle, Shillong- 793001

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Annexure-R, 69

DEPARTMENT OF POSTS
O/O THE SR. SUPDT OF POST OFFICES: MEGHALAYA DIVISION
SHILLONG -793001

NO. A1-12/Rlg/Corr/Part-IV/98-99, Dated at Shillong the 28th June 2002.

The following posts of part time Mali is hereby withdrawn with effect from 1-7-2002.

- 1) Part time Mali at Tura H.O.
- 2) Part time Mali at Laitumkhrah.
- 3) Part time Mali at Nongpoh.
- 4) Part time Mali at Rynjah.

The Postmaster, Tura and SPMs of the concerned Offices may engage occasional labours for planting of flowers once/twice in a month on daily wage.

[Signature]
Sr. Supdt of Post Offices
Meghalaya Division, Shillong-793001.

Copy to :-

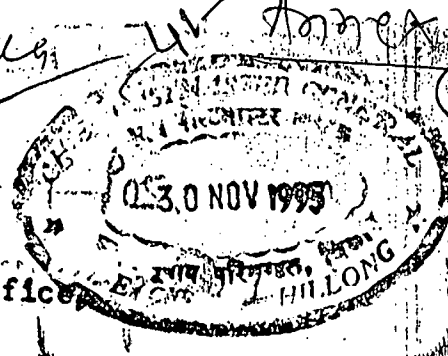
1. The Sr. Postmaster, Shillong G.P.O. for information and necessary action.
2. The Postmaster, Tura H.O. for information and necessary action.
3. The SPM/Laitumkhrah for information.
4. The SPM/Nongpoh for information.
5. The SPM/Rynjah for information.
6. The DA(P) Kolkata for information.
- 7-10. The Estt. File of the following S.Os.
11. O/c

[Signature]
Sr. Supdt of Post Offices
Meghalaya Division, Shillong-793001.

Attested

[Signature]
6/3/03
Officer In-charge (Legal Cell)
O/o the Chief Postmaster General
N.E. Circle, Shillong- 793001

To
The Postmaster,
Umpling Sub-post office,
Shillong-793006.



Sub:- Regularisation in the post of Mali.

Sir,
I beg to state that I am working as Mali (casual) in Umpling Sub-post office since 1.1.1982 on fixed remuneration of Rs.300/- p.m.

Sir, till date my services have not been regularised although I am serving as such for more than 10 (ten) years without any break and in the full satisfaction of the department/office where I am working.

Therefore, I request your goodself kindly to regularise my service in the post. In this connection I am to invite a reference to Govt. of India, Deptt. of P&T OM No.49094/18/84-Estt.(c) dated 7.5.1985 wherein it has been laid down that the services of casual workers who have served continuously for specified period shall be regularised.

Once again, it is my humble submission to your goodself to regularise me in the post for which I shall remain ever grateful to you.

Dated Shillong the
25th Nov '93

Yours faithfully,

(KRISHNA BHADUR CHHETRI)

Copy forwarded to:-
The P.M.G., N.E. Circle, Shillong-I,
for kind information and necessary action.

(KRISHNA BHADUR CHHETRI)

Attested

Officer In-charge (Legal Cell)
O/o the Chief Postmaster General
N.E. Circle, Shillong- 793001