

3100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No.....145/2003.....

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

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

1. Orders Sheet. O.A.....145/2003..... Pg.....1.....to.....4.....
2. Judgment/Order dtd. 22/09/2004..... Pg.....1.....to.....6..... allowed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....145/2003..... Pg.....1.....to.....28.....
5. E.P/M.P..... Pg.....to.....
6. R.A/C.P..... Pg.....to.....
7. W.S. Respondents Nos. 1, 2, 3, 8, 9..... Pg.....1.....to.....5.....
8. Rejoinder filed by the Applicant..... Pg.....1.....to.....12.....
9. Reply..... Pg.....to.....
10. Any other Papers..... Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (JUDI.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 145/2003

Misc. Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Applicants: - Sri. Ashim Kr. Deb

Respondents: - U. B. S. Roy

Advocate for the Applicants: - Mr. S. Sarma

Ms. U. Das

Advocate for the Respondents: -

Notes of the Registry	Date	File	Order of the Tribunal
This application is in form but not in the Condemnation form filed / not filed C.C. for Rs. 50/- vide IPO/BD No 49044 Dated 19.5.03.	27.6.03	pg	Heard Mr S. Sarma, learned counsel for the applicant and Mr A.K.Choudhury, learned Addl.C.G.S.C for the respondents Application is admitted. Issue notice. Call for the records. List on 1.8.03 for written statement and further order.
<i>1/2 Normal By Register 26/6/03</i>	1.8.2003	pg	Put up again on 22.8.2003 for orders.
Steps taken, <i>26/6/03</i>	16.12.03	mb	Written statement filed. Case is now ready for hearing. List on 20.1.04 for hearing. In the meantime the applicant may file rejoinder if any.
Ex. copy order dated 24/6/03 <i>27/6/03 Notice preferred & sent to BLS for avis the respondent No 1 to 4 by Regd ADG DPO 1417 to 1420 Dated 27/6/03</i>	17/7/03	pg	<i>I.C. Dhal</i> Member

(2)

MR/45/03

No. written statement
has been filed.

22.8.2003 List again on 12.9.2003 to enable
the respondents to file written state-
ment.

30
31.7.03.

No. written statement
has been filed.

My
21.8.03.

mb

No. whs has been
filed.

My
17.9.03.

12.9.2003 present: The Hon'ble Mr.K.V.Prahala^{dan}
Administrative Member.

Written statement filed today. The
applicant is allowed three weeks time to
file rejoinder, if any.

List the case on 24.10.2003 for
order.

I.C.V. Prahala
Member

bb

15.9.03

W/S Submitted
by the Respondent Nos.
1, 2, 3 & 4...

24.10.03 There is no Bench today.
Adjourned to 3.11.03.

15/10
Jan

3.11.03 No Bench today.
Adjourned to 25.11.03.

15/10
by

25.11.03. No Bench today.
Adjourned to 16.12.2003.

15/10
by

20.12.03 Adjourned to 20.1.04.

15/10
by

3.3.2004 Four weeks time is allowed to the
applicant to file rejoinder. List the
case on 24.4.2004.

I.C.V. Prahala
Member (A)

bb

7.4.2004 Respondents have filed written statement. List the case for hearing on 30.4.2004 as prayed by Ms.U.Das, learned counsel for the applicant.

Works have been filed.

KV Prahledan
Member (A)

29.4.04

bb
30.4.2004 On the plea of learned counsel for the applicant the case is adjourned. List on 17.5.2004 for hearing.

KV Prahledan
Member (A)

mb

17.5.2004 On the plea of counsel for the applicant, the case is adjourned. List on 24.5.2004 for hearing.

KV Prahledan
Member (A)

mb

25. 5.04 24.5.2004 On the plea of counsel for the respondents, the case is adjourned. List on 11.6.2004 for hearing.

Rejoinder filed by the applicant.

25.

KV Prahledan
Member (A)

mb

16.6.2004 Present: The Hon'ble Smt. Bharati Roy Member (J)
The Hon'ble Shri K.V.Prahledan Member (A).

Mr.A.K.Chaudhuri, learned Addl.C.G.
S.C. seeks adjournment on personal ground
Matter be posted on 18.6.2004 for hearing.

KV Prahledan
Member (A)

A
Member (J)

bb

9-9-04

The case is ready
for hearing

18.6.04

Adjourned. List on next D.B.
for hearing.

For order.

10.9.04. Present: Hon'ble Mr. R.K. Batta (Justice)
Vice-Chairman.

Hon'ble Mr. K.V. Prahladan, Administra-
tive Member.

The case is ready
for hearing.

W.S.
13/9/04

The matter has been adjourned
from time to time. At the request of
Ms. U. Das the learned counsel for the
applicant ^{lack} the adjournment is granted
and the matter is fixed according to
the convenience of the counsel for the
parties, on 14.9.04.

K. V. Prahladan
Member

R.
Vice-Chairman

lm

14.9.2004

On request of Mr. A.K. Chaudhuri,
learned Addl. C.G.S.C., not objected by
the learned counsel for the applicant,
the matter is adjourned to 17.9.04 for
hearing.

K. V. Prahladan
Member

R.
Vice-Chairman

16-9-04
The case is ready
for hearing.

nkm

R.
17.9.04

Heard Mr. U.K. Nair, learned counsel for
the applicant and Mr. A.K. Choudhuri, learned
Addl. C.G.S.C for the respondents partly.
Arguments to continue.

Stand over to 22.9.2004.

K. V. Prahladan
Member

R.
Vice-Chairman

15/10/04
Copy of the Judgment
has been sent to the
Office of the Hon'ble
Judge to the applicant
as well as to the
Adv. for the Respondents.

pg

22.9.2004 Present: The Hon'ble Mr. Justice R.K. Batta
Vice-Chairman.

The Hon'ble Mr. K. V. Prahladan
Member (A).

Heard counsel for both the
parties. Hearing concluded. Judgment
delivered in open Court, typed in separate
sheets.

The application is allowed in
terms of the order. No costs.

K. V. Prahladan
Member (A)

R.
Vice-Chairman

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./XXX. No. 145 of 2003.

DATE OF DECISION 22.9.2004.

Sri Ashim Kr. Deb APPLICANT(S)

..... Mr. U.K. Nair & Ms. U. Das ADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

U.O.I. & Ors. RESPONDENT(S)

..... Mr. A.K. Chaudhuri, Addl. C.G.S.C. ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. JUSTICE R. K. BATTA, VICE CHAIRMAN. *R* —

THE HON'BLE MR. K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ? *Ys*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman. *R* —

N

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 145 of 2003.

Date of Order : This, the 22nd Day of September, 2004.

THE HON'BLE MR. JUSTICE R. K. BATTA, VICE CHAIRMAN.

THE HON'BLE MR. K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Sri Ashim Kr. Deb
S/o Late Anil Ch. Deb
Resident of Vill. Banglaghat
P.O: Banglaghat (Silchar)
Cachar, Assam. Applicant.

By Advocates Mr.U.K.Nair & Ms.U.Das.

- Versus -

1. The Union of India
Represented by Secretary
to the Government of India
Ministry of Communication
Dept. of Posts, New Delhi.
2. The Chief Post Master General
Meghdoot Bhawan
Guwahati-781 001.
3. The Senior Superintendent of Post Offices
Cachar Division
Silchar - 788 001.
4. The Senior Post Master
Silchar, Head Office
Silchar, Assam. Respondents.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C.

O R D E R (ORAL)

BATTA, J.(V.C.):

The applicant was appointed as Extra Departmental Branch Post Master at Banglaghat Post Office on 10.1.1998. However, his services were terminated vide order dated 2.6.1998. The applicant preferred appeal before the Post Master General, Assam Circle and subsequently filed O.A.No.170 of 1998. By order dated

R
—

Contd./2

27.8.1998 respondents were directed to dispose of the representation made by the applicant. Pursuant to that the order of termination dated 2.6.1998 was set aside by the Director of Postal Services, Assam Region vide order dated 15.4.1999. The applicant was not allowed to join in spite of the said order till 8.10.1999. The applicant filed representation for backwages but only sanction of Rs.500/- as ex-gratia one time payment was granted. The petitioner has approached this Tribunal for directions to pay backwages for the period when his services were terminated till he was allowed to join i.e. to say from 2.6.1998 to 8.10.1999.

2. Respondents have taken ~~not~~ stand that under the Rules there is no provision for payment of backwages and the only provision is relating to payment of ex-gratia ~~not~~ sum of Rs.500/-.

3. We have heard Mr.U.K.Nair, learned counsel for the applicant as well as Mr.A.K.Chaudhuri, learned Addl. C.G.S.C. for the respondents.

4. We may, to start with, point out that the Rules upon which reliance has been placed by the respondents denying backwages and sanctioning of Rs.500/- only cannot be ~~applicable~~ ^{applied} to the case of the applicant as his services were terminated without any enquiry. Note 22 of Swamy's Compilation of Service Rules for Postal and Telegraph E.D. Staff, relevant copy of which ^{is} filed by the applicant is at Annexure-1 to the rejoinder to the

written statement, would apply in cases of employees against whom ~~the~~ departmental proceedings had been initiated and they were exonerated. This provision cannot be applied to the applicant in the present case whose services were terminated without any notice.

5. The question, ^{which} remains to be decided, is as to whether the applicant would be entitled to backwages. The Apex Court has laid down in a number of judgments that it is well settled position in law that on reinstatement there is no automatic entitlement to full backwages. The Apex Court in case of Ram Ashrey Singh and another -vs- Ram Bux Singh and others reported in AIR 2003 SC 1579 has made aforesaid observations and has quoted with approval judgment in Hindustan Tin Works Pvt. Ltd - vs- The employees of M/s. Hindustan Tin Works Pvt.Ltd and others (1979 (2) SCC 80 which reads as under :-

"In the very nature of things there cannot be a straight-jacket formula for awarding relief of back-wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full Back-wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and

fanciful but legal and regular (See Susannah Sharp v. Wakefield, (1891) AC 173 179)." 10

The other judgments on the issue are (i) P.I.G.T. of Medical Education and Research, Chandigarh -vs- Raj Kumar (2001 2 SCC 54, (ii) Hindustan Motors Ltd. -vs- Tapan Kumar Bhattacharya and another (2002 AIR SCW 3008), (iii) Indian Railway Construction Co. Pvt. Ltd -vs- Ajay Kumar, JT 2003(2) SLR 639(SC) and (iv) M.P.State Electricity Board -vs- Smt. Jarina Bee, 2003(4) SLR 749. (v) U.O.I vs Madhusudan Prasad (2004) 1 SCC 43

6. Mr.U.K.Nair, learned advocate for the applicant, has placed reliance on Union of India -vs- Madhusudan Prasad (2004) 1 SCC 43 wherein it was found that the services of the respondent therein had been terminated without any show cause notice or any enquiry and the said order was set aside by the Appellate Authority which directed his reinstatement. The Appellate Authority had held that the respondent therein was not entitled to get back wages for the period he was out of service. The Apex Court held that the respondent was removed from service without any enquiry and he was not even given a show cause notice prior to his dismissal from service. It was further laid down that there was fault on the part of the employer in not following the principle of natural justice. Therefore, Fundamental Rule 54 cannot be invoked by the authorities to deny him back wages from the date of dismissal to reinstatement. This case will be in all fours in so far as the case of the applicant is

concerned. In the case before us also, services of the applicant were terminated without any notice nor any enquiry was held and the termination was in total breach of principles of natural justice.

7. Mr. A.K. Chaudhuri, learned Addl.C.G.S.C. has placed reliance on Burn Standard Co. Ltd and another -vs- Tarun Kumar Chakraborty and others (2003 SCC (L&S) 1015).

Infact, this ruling will not help the respondents. In that case respondent was not allowed to join service by the appellants till 15.5.1997 due to High Court's interim order passed in another case, which was later on withdrawn on 12.10.1988. Respondent had, infact, reported after selection on 20.10.1984 but was not allowed to join service till 15.5.1997. Apex Court examined the issue in the light of the principle "no work, no pay" came to the conclusion that appellant Company therein was justified in not allowing the respondent to join from 20.10.1984 to 12.10.1988 when the interim order passed by the High Court had been withdrawn, but in the absence of any reasonable justification, respondent was held to be entitled to receive his full salary with usual allowances for the period commencing after the date of withdrawal of case i.e. to say 12.10.1988 till 15.5.1997. The Apex Court has observed that it is no doubt true that the respondent did not work during the period 12.10.1988 to 15.5.1997 and without anything more, he cannot claim salary for the said period on the principle "no work, no pay". But in

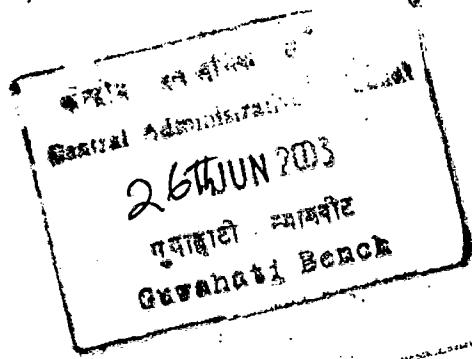
the said case, respondent reported to the appellants to join service on 12.10.1988 but was not allowed to join till 15.5.1997. Thus, it is not on account of any fault of the first respondent that he was kept out of service by the appellants. The Apex Court found that during the period 12.10.1988 till 15.5.1997 there was no justification for the appellant employer much less any impediment in law to permit the first respondent to join service and for this period respondent is entitled to receive full salary with usual allowances admissible to the post with all consequential benefits.

8. In the case before us also, the applicant was kept out of service after termination without any fault whatsoever on his part and neither any show cause notice was issued prior to termination nor any inquiry whatsoever was conducted. The termination was in total breach of principles of natural justice. Even after the termination was set aside by the Director of Postal Services on 15.4.1999, he was not allowed to join till 8.10.1999, which shows the pathetic state of affairs of the department itself in not complying with the order of reinstatement. In the facts and circumstances of the case, we are of the considered view that the applicant is entitled to receive full back wages for the period 2.6.1998 to 8.10.1999 with all consequential benefits for the said period.

Application is allowed in aforesaid terms with costs.


(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(R.K. BATTA)
VICE CHAIRMAN



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. 145 of 2003

BETWEEN

Shri Ashim Kr. Deb Applicant.

AND

Union of India & ors. Respondents.

I N D E X

Sl. No.	Particulars	Page No.
1.	Application	1 to 9
2.	Verification	10
3.	Annexure-1	11
4.	Annexure-2	12-16
5.	Annexure-3	17, 18
6.	Annexure-4	19
7.	Annexure-5	20
8.	Annexure-6	21, 21-A
9.	Annexure-7	22, 23
10.	Annexure-8	24-26
11.	Annexure-9	27
12.	Annexure-10	28

Filed by : Alsha Das

Regn. No. :

File : C:\WS7\ASHIM

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

LIST OF DATES

*Case of regularization service
bet 2.6.98 & 8.10.99.*

20.9.97 Respondents issued an advertisement Extra Departmental Branch Post Master through the local entertainment channel. Accordingly the applicant filed representation.

06.1.98 Intimation regarding selection of the applicant for the said post.

10.1.98 The applicant took over the charge of the Banglachhat Branch post office as EDBPM.

21.1.98 The applicant submitted his joining report to the Respondents.

02.6.98 Respondents terminated the service of the applicant.

23.6.98 The applicant preferred appeal before the Post Master General.

27.8.98 Judgment and order of this Hon'ble Tribunal passed in OA No. 170/98.

15.4.99 The termination order dated 2.6.98 was set aside by the Director of Postal Services.

11.5.99 The applicant preferred representation before Senior Superintendent of Post Offices, Cachar Division.

16.8.99 The applicant preferred representation before the Director of Postal Services, Assam Region, Guwahati.

29.9.99 The applicant submitted charge report.

17.11.99 The applicant preferred representation praying for releasing his back wages before Senior Superintendent of Post Offices.

22.3.2001 An order has been issued sanctioning an amount 500/- as an ex-gratia one time payment.

20.12.2001 An intimation has been made that the period in question could not be regularised as there is no rule guiding the field.

filed by
the applicant through
Advocate
A. Das
26/6/03

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

O.A.No. 145 of 2003

BETWEEN

Sri Ashim Kr. Deb
S/o Late Anil Ch. Deb.
Resident of Vill. Banglaghat,
P.O. Banglaghat (Silchar)
Cachar, Assam,

..... Applicant.

- AND -

1. The Union of India.
Represented by Secretary to the
Govt. of India.
Ministry of Communication ,
Dept. of Posts, New Delhi.
2. The Chief Post Master General
Meghdoot Bhawan,
Guwahati-781001.
3. The Senior Superintendent
of Post Offices, Cachar Division,
Silchar - 788001.
4. The Senior Post Master,
Silchar, Head Office,
Silchar, Assam.

..... Respondents.

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION
IS MADE:

This application is not directed against any particular order but has been made against the action of the respondents in not regularising the period of service of the applicant w.e.f. 2.6.98 to 8.10.99. The applicant through this application also prays for an appropriate direction towards the respondents to treat the period w.e.f. 2.6.98 to 8.10.99 as on-duty and to direct them to pay the arrear salary and other consequential benefits.

Filed by
the applicant through
Abhishek Das
Advocate
26/5/03

2. LIMITATION:

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

3. JURISDICTION:

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

4. FACTS OF THE CASE:

4.1. That the applicant is a citizens of India and as such they are entitled to all the rights, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

4.2. That the applicant pursuant to an advertisement dated 28.9.97 issued through the local entertainment channel applied for the post of extra Departmental Branch Post Master. Acting on the representation filed by the applicant the respondents allowed him to appear in the selection test and verified his bio-data. Subsequently the respondents by letter dated 6.1.98 intimated the applicant regarding this selection for the said post.

4.3. That the applicant pursuant to the letter dated 6.1.98 took over the charge of the Banglaghat Branch Office as Extra Departmental Branch Post Master on 10.1.98 and subsequently on 21.1.98 he submitted his joining report to the respondents.

4.4. That the applicant while was working as Extra Departmental Branch Post Master (EDBPM) in Banglaghat B.O. received a letter dated 2.6.98 by which the service of the

Asif

applicant was terminated without any reason. No formal notice was issued prior to issuance of the said order of termination.

A copy of the said order dated 2.6.98 is annexed herewith and marked as Annexure-1.

4.5. The applicant having no other alternative preferred an appeal addressing to the Post Master General, Assam Circle praying for setting aside of the said Annexure-1 dated 2.6.98. However the aforesaid appeal dated 23.6.98 was not entertained by the authority.

A copy of the said appeal dated 23.6.98 is annexed herewith and marked as Annexure-2.

4.6. That the applicant having no other alternative and seeking an urgent and immediate relief approached the Hon'ble Tribunal by way of filing OA No. 170/98 challenging the order of termination dated 2.6.98. The Hon'ble Tribunal after hearing parties to the proceeding was pleased to direct the respondents to dispose of the appeal preferred by the applicant vide its judgment and order dated 27.8.98.

A copy of the said judgment and order dated 27.8.98 is annexed herewith and marked as Annexure-3.

4.7. That the applicant states that after long persuasion the Director of Postal Services, Assam Region issued an order dated 15.4.99 by which the order of termination dated 2.6.98 was set aside.

A copy of the said order dated 15.4.99 is annexed herewith and marked as Annexure-4.

4.8. That the applicant on receipt of the order dated 15.4.99 visited the office of the respondents but no action was taken in this regard. The applicant having no other alternative preferred a representation dated 11.5.99 to the Senior Superintendent of Post Offices, Cachar Division praying for allowing him to resume duty in terms of the order dated 15.4.99 by which the order of termination was set aside.

A copy of the said representation dated 11.5.99 is annexed herewith and marked as Annexure-5.

4.9. That the applicant states that even after submission of Annexure-5 representation the Senior Superintendent of Post Offices, Cachar Division never received any order reinstating the applicant in his service and kept the matter pending without any intimation. The applicant having found no response from the said authority once again preferred a representation dated 16.8.99 to the DPS, Guwahati highlighting his grievances.

A copy of the said representation dated 16.8.99 is annexed herewith and marked as Annexure 6.

4.10. That the respondents after a lapse of about 5 months from the order dated 15.4.99 (Annexure 4) allowed the applicant to resume his duty w.e.f. 1999 and to that effect the applicant submitted a Charge Report. The charge Report was in fact prepared on 29.9.99 but same was not handed over to the present applicant till 9.10.99. The officer concerned on 9.10.99 personally served a copy to the applicant and at the same date he resumed his duty as EDBPM.

A copy of the said charge Report is annexed herewith and marked as Annexure 7.

4.11. That the applicant states that after joining in the post of EDBPM the applicant kept on requesting the authority for releasing his back wages w.e.f. 2.6.98 but the respondents never responded to his such prayer. The applicant in this context submitted a representation 17.11.99 to the Senior Superintendent Post Offices for release of his arrear w.e.f. 2.6.98 i.e. from the date of termination till he resumed his duty.

A copy of the said representation is annexed herewith and marked as Annexure 8.

4.12. That the applicant states that the Respondents after long pursuance of the matter issued an order dated 22.3.2001 by which an amount of Rs. 500/- as an ex-gratia one time payment has been sanctioned to the present applicant in terms of EDA conduct and service Rules (Rule-4)

A copy of the said order dated 22.3.2001 is annexed herewith and marked as Annexure-9.

4.13. That the applicant states that admittedly the order of termination for set-aside by the concerned authority treating it to be an illegal order. The applicant kept on pursuing the matter before the authority but nothing was communicated to him. The respondents lastly issued an order dated 20.12.2001 by which intimation has been made that the period in question could not be regularised as there is no rule guiding the filed.

28

A copy of the said communication dated 20.12.2001 is annexed herewith and marked as Annexure 10.

4.14. That the applicant begs to state that the respondents have acted contrary to the provision of rules guiding the field. The rule quoted by the respondents while granting ex-gratia payment to the applicant vide order dated 22.3.2001 has got no relevancy in the instant case. The rules pertaining to EDA clearly indicate fact that in case of re-instatement the concerned employee is required to be treated on duty for all purposes and after such reinstatement the concerned employee is entitled to all the consequential service benefits including arrear salary etc. however the respondents in the instant case has departed from the said rules and without there being any valid reason rejected the claim of the applicant invoking irrelevant rules.

4.15. That the applicant states that the respondents have failed to take into consideration the relevant rules guiding the field and invoked Rule 4 & EDA conduct and Service Rules issued under OM dated 25.4.94 and 27.4.94. In this context it is stated that the Rule quoted by the respondents is applicable in case and EDA is placed under put off duty pending finalisation of disciplinary proceeding under Rule 8 of EDA conduct and Service Rules. It is not worthy to mention here that in the order of termination dated 2.6.98 the respondents have quoted Rule G of EDA conduct and Service Rules 1964 along with instructions from APMG. In fact the said order dted 2.6.98 and the manner and method adopted by the respondents in dispensing with the service of the applicant does not indicate the fact that

Rule 6 has been adopted in terminating his service. In such an eventuality the impugned action on the part of the respondents can't be held to be legal and same was liable to be set aside and quashed.

4.16. That the applicant states that there is no denial of the fact that the order of termination dated 2.6.98 was an illegal order and as such the respondents are duty bound to pay the applicant the full back wages for the applicant the full back wages for the period under which he was forcefully kept, away from his employment. It is noteworthy to mention here that even after setting aside of the order of termination vide order dated 15.4.99 the respondents took another 5 months time to reinstate the applicant and as such appropriate direction need be issued to the concerned authority of the respondents to treat the period w.e.f. 2.6.98 to 8.10.99 as on duty with a further direction to extend all the consequential benefits including arrear salary and seniority etc.

5. GROUND FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the respondents have acted illegally in not regularising the period of absence w.e.f. 2.6.98 to 8.10.99 and not releasing his pay and allowances for the said period by issuing various orders without conformity with the rules guiding the field and such same are liable to be set aside and quashed.

5.2. For that the respondents have acted illegally in rejecting the claim of the applicant by invoking irrelevant rules and as such the impugned action of the respondents and the orders communicated in this regard are liable to be set aside and quashed.

22

5.3. For that respondents have acted contrary to the settled proposition of law in rejecting their claim of the applicant and as such their action/inaction in rejecting the claim of the applicant towards regularisation of the break period of his service and as such aforesaid actions/orders are not sustainable and liable to be set aside and quashed.

5.4. For that the applicant under any circumstance can't be treated to be an unauthorised leave and as such the question of not regularising the service of the applicant from 8.6.98 till the date of his reinstatement i.e. 8.10.99 does not arise and as such appropriate direction need be issued to the respondents directing them to regularise the period w.e.f. 2.6.98 to 8.10.99 with full back wages treating same to be on duty.

5.4. For that in any view of the matter the impugned action of the respondents are not sustainable in the eye of law and liable to be set aside and quashed.

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

6. DETAILS OF REMEDIES EXHAUSTED:

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

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER

COURT:

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

Afreb

23

application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To direct the Respondents to regularise the period of service of the applicant w.e.f. 2.6.98 to 8.10.99 as on duty, all purposes.

8.2. To direct the respondents to release the arrear pay and allowance the applicant w.e.f. 2.6.98 to 8.10.99 with a penal interest @21% on such arrear.

8.3. Cost of the application.

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

9. INTERIM ORDER PRAYED FOR:

During the pendency of the OA the applicant prays for an interim order directing the respondents to release the pay and allowances of the applicant w.e.f. 2.6.98 to 8.10.99.

10.

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

1. I.P.O. No. : 86 490441

2. Date : 19/5/03

3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

Akob

24

VERIFICATION

I, Sri Ashim Kumar Deb, son of Late Anil Ch. Deb, aged about 32 years, at present working as EDBPM in Banglaghat Branch Office, Dist. Cachar, do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 4.1, 4.4, 4.5, 4.6 & 5.7 to 12... are true to my knowledge and those made in paragraphs 4.2 to 4.3..... are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 22nd day of May of 2002.

Signature.

Ashim Kumar Deb

DEPARTMENT OF POST & INDIA
OFFICE OF THE SENIOR SUPDT OF POST OFFICES
CACHAR DIVISION SILCHAR-788001

Memo No. M3-859/PF

Dated at Silchar the 02-06-98.

Whereas Sri Ashim Kr. Deb, BPM, Baglaghat B.O in account with Srikona S.O under Silchar H.O has been working as BPM provisionally with effect from 21-1-98. His continuation as the BPM is found unjust on administrative ground.

Now therefore in exercise of the power conferred in Rule 6 of EDA (Conduct & Service) Rules 1964 & in conformity with the instructions from the A.P.M.O (Vig) o/o the Chief Postmaster General, Assam Circle, Guwahati - 781 001, I Sri J.K. Barbhuiya, Sr. Supdt. of Post Offices, Cachar Division Silchar- 788 001 do hereby order to terminate the service of Sri Ashim Kr. Deb, BPM, Baglaghat B.O in account with Srikona S.O with effect from 02-06-98 (P/N).

Sd/-

(J.K. BARBHUIYA)
Sr. Supdt. of Post Offices
Cachar Dn. Silchar-788001

Copy To:-

1. The Sr. Postmaster, Silchar H.O.
2. The BPM, Srikona S.O.
3. Sri Ashim Kr. Deb, BPM, Baglaghat through SDI(P) West Sub-Dn. Silchar for effecting delivery.
4. Sri P.K. Das, SDI(P) Silchar West Sub-Dn. for information and necessary action.
5. Spare.

J.K.D.
Sr. Supdt. of Post Offices
Cachar Dn. Silchar - 788001

Attested
V.Dar
Advocate.

The Postmaster General,
Assam Circle, Meghdoot Bhawan
Gauhati-I.

Sub:- Appeal against the termination order issued by the Sr. Supdt. of Posts, Cachar Division, Silchar-1 vide his letter No. H3-857/PF dated 02-6-98.

Respected Sir,

With due respect and humble submission, I beg to leave the following sets of facts, for favour of your kind information, and necessary orders for the sake of justice, equity and to increase the dignity of Postal Rules, which has been implimenting by the Departmental Officer, in the name of President of India.

1. That Sir, in accordance with the Senior Superintendent of Posts, Cachar Division Memo No. H3-857/PF dated 10-1-98, I was appointed as B.P.M. Baglaghat B.O. and after completion of 152 days service, Senior Superintendent of Posts terminated my service vide his letter No. H3-857/PF dtd. 2-6-98, citing the grounds of removal as -

(a) My continuation is found unjust on administrative grounds.

(b) In exercise of Rule 6 of EDA(Conduct and service rules 1964, and in conformity with the instructions from APMG(Vig) o/o the CPMG Assam Circle.

But, the unjust administrative grounds, and APMG's instructions were not communicated to me.

2. That Six, originally, there was an advertisement from the Senior Superintendent ~~xxxxxxxxxx~~ of Posts Cachar Division, through employment exchange, for the post of B.P.M. Baglaghat and Local employment exchange forwarded the names of mine including the two others namely (a) Sri Haridhan Das (SC) Brother of Ex. B.P.M Giridhan Das, who has been promoted to Postman, (b) Sri Putul Suklabaidya (SC) B.A. passed the residential distance of us from the proposed post office are as follows: (c) Asim Kumar Deb (General) - 250 meter, (d) Sri Haridhan Das (SC) - 500 meter, (e) Sri Putul Suklabaidya (SC) - 500 meter

3. That Sir, so far I know, there are some departmental norms, under which selection are made, these are (a) age, (b) Educational qualification (c) Property, (d) Residence etc. and perhaps, all my requisite critaria were found better than that of all other applicants for which myself, has been appointed as B.P.M. Baglaghat, and now terming the said

Arrested
Wear
Ad. care.

appointment as "found unjust on administrative grounds" are a suicidal steps of the appointing authority, and I am being victimised, which neither logically nor lawfully justified.

4. That Sir, though Sr. Superintendent of Posts, Cachar Division defining this appointment as a mistake of appointing authority, but basically it is not like that, Senior Superintendent of Posts (present) belongs to Scheduled Caste community and after assumption of charge he himself instigated other two scheduled caste candidates for lodging the complain against my appointment to the higher authority, as an instance of injustice to the S.C. community and accordingly it was done, which necessitates vigilence interruption otherwise E.D. appointments are going on every month in Cachar Division, but those are not defined as mistake of administration and not orienting vigilence intervention.

5. That Sir, perhaps it will not be unwise, to give geographical and other employmennt oriented data and informations of Baglaghat and near by area to your honour for taking a judicious and mercious decision in this regards. The village Baglaghat, consists of the following parts.

(a) Baglaghat Part-I & II -	Population - 2000 SC/	OBC/General caste & ors.
(b) Indraghar Tea -	-do-	600 Labour.
(c) Rampur Colony -	-do-	400 G.Caste/
		other castes.
(d) Shivachal -	-do-	700 G.Caste/
		SC/ST.
(e) Bhavan tilla -	-do-	250 S.T.
(f) Ghagra -	-do-	550 G.Caste/
		other castes.
(g) Tillagram -	-do-	600 General
		Caste.

From these population pattern your honour could easily assessed that the area is not at all a scheduled caste dominated one, it is dominated by General Caste/other caste/ST population and scheduled caste community is representing one fourth of the total population.

6. That Sir, there are 13 Post offices within 8 K.M.s radius from Baglaghat B.O. where there is 32 E.D.Posts and it is mostly dominated by scheduled castes and O.B.C. community, even they are enjoying much higher percentage of appointment. than that of their allotted quota fixed by the

..3..

A. C. S.
V. S. S.
Advocate.

Govt. of India and by the Postal department. If the employment particulars are officially collected by your honour, then everything will come to light.

7. That Sir, being instigated and motivated by the officer of Postal department, the two scheduled caste candidates lodged allegation against me to your honour, as such I think, it is necessary on my part to furnish some informations about them.

(1) Sri Putul Suklabaidya - B.A.passed.

The departmental requirements was H.S.L.C.passed, in such a case it is not understood how employment exchange sponsored his name, and how appointing authority accepted his application as a valid one. His candidature could have been easily rejected defining the same as over qualified. In this days of employment crisis, if a graduate is coming down to the post of H.S.L.C.passed then where those unfortunate H.S.L.C.passed fellow will go ? Whether H.S.L.C.passed candidates can go to the post allotted for graduate. If not, then crossing of jurisdiction system is to be stopped to avoid harassment of a legally appointed person like me. The vigilence section of your office also could have measured this points, before reaching in a decision in instructing the local disciplinary authority for initiating action against me, but unfortunately it was not done.

8. That Sir, then coming to the question of Sri Haridhan Das (SC,H.S.L.C.passed). He is the brother of out going BPM Sri Giridhan Das who has been promoted to the cadre of departmental postmen. Sri Haridhan Das also lodged complain against me, terming the same as a gross injustice to the scheduled caste candidates, and departmental officers. Perhaps also give due weight to that, now naturally the question arises-

(1) Whether there is any rule that if one member of the family gets promotion in the postal department original post will be given to another member of that family ?

(2) If, so, then what were the necessity of advertising the vacancy, Sri Haridhan Das could have been easily accomodated as BPM Baglaghat, in the vacancy originated due to promotion of his brother ?

9. That Sir, leaving aside these two causes, there are no other grounds relating to my appointment, which can be

Attested
V. D. Ven
Advocate

defined as "unjust on administrative grounds". My appointment as BPM Baglaghat is in no way can be defined as a case of denial of candidature of scheduled caste candidate. Because the post of BPM Baglaghat, where I was appointed as BPM that post was not a post of "Reserved Category" it was an open post. Had it been a reserved one, why that was not specifically mentioned in the vacancy notification notice, circulated vide your office No. Staff/13-5/88/Blg/Cost dated 12-12-97 covering from (Para 4-8) and No. 137-10/97-SPB-II dtd. 20-5-98 and in that case there was no necessity from my side for filing an application against that post. There was no necessity from the side of appointing authority to termed my appointment as found unjust on administrative grounds and vigilence intervention ~~xxx~~ was also not necessary.

10. That Sir, the local appointing authority knowing it fully well my appointment as BPM Baglaghat is not a case of denial of anybodies right, nor the post is a reserved category one, there was no legal rights and claims of the scheduled caste applicants in the post, still without defending their activities, rather throwing me towards in security and termination, without any fault of mine. The appointment which was given to me is not snatched away by me, and I even did not ask or prressurised anybody to make or breake rules for giving me appointment in that post.

Under the circumstances, grounds narrated above your gracious honour is requested to reinstate me in the post, where I was legally and lawfully appointed, otherwise kindly communicate me the

(1) the unjust administrative grounds, and copy of vigilence instructions, under which my appointment as BPM Banglaghat is becomes unlawful to the eye of that appointing authority who once appoint me in the said post and now punishing me, without intimating grounds, and without any fault of mine.

(II) Rule 6 of E.D.A. conduct rules, is a rule framed under the proviso of Article 309 of the constitution and it can not modified by an executive order. The services of a temporary government servant can be terminated under the rules of his employment, but if the order visits the public servant with any evil consequences or casts an aspersion, against his character or integrity, it must be considered or be done by way of punishment, and the

..5..

Attoe.
V. S. D.
Advocate

- 5 -

punishment could be awarded only after enquiry under rules.

Article 311 of the constitution extends protection equally to all government servant holding permanent or temporary posts or officiating in any of them, but without doing so, present Senior, Superintendent of Posts, who belongs to scheduled caste community and by whose instigation, Mr. Suklabaidya and Mr. Haridhan Das lodged complain against my appointment terminated me by his discretion, and misusing the provisions of Rule 6 of E.D.A. conduct and service rules 1964. In this connection I am citing the observation of Supreme Court -

"In a system governed by rule of law, discretion, when conferred upon executive authorities must be confined within clearly define limits. If a decision is taken without any principle of without any rule. It is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. Law has reached its finest moment, when it has freed man from the unlimited discretion of some ruler."

In the above seales, and guide lines, my termination under Rule 6 of GDA conduct and service rules are nothing but intentional harassment to a legally appointed candidate, just to give benefit to candidates belongs to his scheduled caste community.

An action in this regard from your kind end is highly awaited to provide justice to me and obliged.

Yours faithfully,

Dated

23-6-98

Ashim Kumar Deb
B.P.M. Baglachat
s/o Late Anil Ch. Deb.
Vill & P.O. Baglachat
Dist. Cachar, Assam.

Advance copy forwarded to:-

(1) P.M.G. Assam Circle, Meghdoot Bhavan, Gauhati-I.

Attested

W. D. Deb
Advocate.

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATIORDER SHEET
APPLICATION NO.

170

OF 199 8

Applicant(s): Shri Ashim K. Dab

-VS-

Respondent(s): Union of India & ors

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

Mr. B. Bhattacharya

Mr. U.K. Nair.

Advocate for Respondent(s):

Mr. C. Bhattacharya

Adil. C. S. C.

27.8.93

This application has been filed challenging the Annexure-5 order dated 2.6.1998 by which the applicant's service was terminated for administrative reason. The facts are :

1. the applicant was appointed as Extra Departmental Branch Post Master

contd..

Accused
Mr. A.
Advocate.

Date	Order of the Tribunal
27.8.98	<p>on condition that he would have to make own arrangement for accommodating the office. Pursuant to the appointment he made arrangement for accommodation, and thereafter suddenly without any notice the impugned order was passed. Thereafter the applicant filed Annexure-7 representation dated 23.6.1998 to the Postmaster General, Assam Circle. The said representation has not yet been disposed of. Hence the present application.</p> <p>We have heard Mr B.K.Sharma, learned counsel appearing on behalf of the applicant and Mr G.Sarma, learned Addl.C.G.S.C for the respondents. Mr G.Sarma submits that he has no instruction as such. On the last occasion we granted two weeks time to Mr G.Sarma to enable him to receive instructions. It is not known what is the administrative reason. Even if there are some administrative reasons according to Mr B.K.Sharma the applicant cannot be terminated in view of the decision of the Apex Court in Superintendent of Post Offices vs. P.K.Rajamma etc. reported in 1977 S.L.J 532. As per the said decision according to Mr Sharma the applicant was a holder of a civil post and he was entitled to get the protection under Article 311 of the Constitution.</p> <p>On the face of it we find that protection had not been given. However, we are not entering into the merit in view of the fact that the representation has not yet been disposed of. We are not inclined to admit the application as six months period is not over. Accordingly we do not entertain the application. However, we hope and trust that the respondents shall dispose of the representation as early as possible.</p> <p>Application is disposed of. No costs.</p>

TRUE COPY

क्रमांक

Section Officer (1)
सचिव अधिकारी (१)
Central Administrative Tribunal
केंद्रीय विधिवाली न्यायालय
मुख्य विधिवाली न्यायालय
मुख्य विधिवाली न्यायालय
मुख्य विधिवाली न्यायालय

Attested

W.B.

Advocate.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

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

Memo. No. Staff/25-1/98/RP(Loose)

Dated at Guwahati the 15th April/99

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

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

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

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

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

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

Copy to -

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

Chambray
Director Postal Services
Assam Region: Guwahati-781 001

Attested
U. S. D.
Advocate.

Regd with A/D

20

ANNEXURE - 5

To

The Senior Superintendent of Post Office's,
Cachar Division,
S I L C H A R.

Sub: Setting aside of termination order of Shri.
Ashim Kr. Deb, ED BPM, Banglachat.

Ref: Memo No: Staff/25-1/98/RP/Loose/dtd. 15.4.99
issued by the learned Director of Postal Services
Assam Region, Guwahati.

Sir,

Your kind attention is drawn to the above cited
order of the Director of Postal Services Assam Region
dtd. 15.4.99 a copy of which was endorsed to you. In
the said order the Director as appellate authority has
categorically set aside your order under Memo No:-
H3/057/PF, dtd. 2.6.98, illegally terminating my service
of ED BPM, Banglachat.

This order of the Director has the effect of
re-instating me in my original service w.e.f. 2.6.98
and I may therefore kindly be taken back to service
from 2.6.98 itself by treating the gap period as duty
for all purpose.

It is also prayed that my salary from 2.6.98 to
30.4.99 may also kindly be released forthwith as I am
facing acute financial hardship due to moving of the
CAT and the appellate authority involving substantial
expenses.

On receipt of the order of the Director I saw you
personally demanding the above claims. But you were
found to be non-committal for reasons best known to
you, hope you will be pleased to take proper action
without further dragging the matter.

Dated, Silchar.
The 11.5.99.

Yours faithfully,
Ashim Kumar Deb
(ASHIM KR. DEB)
ED BPM, Banglachat.
Dist : Cachar, Assam.

Copy submitted to:-
The Director of Postal Service,
Assam Region, Guwahati-781001.

Attested
V. Deb
Advocate.

To

The Director of Postal Services,
Assam Region, Guwahati - 781 001,

Sub :- Setting aside of termination order of Shri
Ashim Kr. Deb ED BPM, Banglaghat in Cachar
District.

Ref :- Your kind order issued under memo No.
Staff/25-1/98/RP/Loose/ Dt/- 15-4-99

Respected Sir,

I beg to state that under the well
considered and specific appellate order issued
by your honour in your memo cited above, the
illegal termination order of my service passed
by the Sr. Supdt. of Post Offices, Cachar Dn
in his cruel Memo No. H3/857/PF dt/- 2-6-98
was set aside and quashed without any reservation.

2. Sir, this order dt/- 15-4-99 of your
goodself had the effect of re-instating me in
my original service w.e.f 2-6-98 with all concom-
itant benefits of salary etc. Accordingly in my
petition dt/- 15-4-99 I moved the Sr. Supdt. of
Post Offices, Cachar, Division to rise to the
occasion and in obedience and implementation of
your directive order dt/- 15-4-99 I should be
taken back to service as ED BPM, Banglaghat,
Cachar wherefrom my neck was chopped for no
fault of mine vide my petition dt/- 11-5-99
addressed to SSP, Cachar Dn with a copy endorsed
to your honour.

3. But no action has yet been taken nor any
snag in implementing your appellate order has
been intimated. This proves the insolent &
vindictive attitude of the SSP, Cachar Dn. who
is bent upon holding scant regard for the
superior order. Such inaction and nugatory
design have thrown me in wide ocean of poverty
mingled with enormous anxiety.

Attested
V. Das
Advocate

contd... p2/-

ए०सी०६१
A.C.O.-61

भारतीय डाक विभाग
DEPARTMENT OF POST, INDIA

(देखिए नियम 267, डाकतार वित्त पुस्तिका का खण्ड I, हितीय संस्करण)
(See Rule 267, Post and Telegraphs Financial Hand Book, Volume-I,
Second Edition)

चार्ज की बदली पर चार्ज रिपोर्ट और नकदी और टिकटों की रसीद
Charge Report and Receipt for each and satmps, on transfer of charge

प्रलापित किया जाता है कि
Certified that the charge of the office of A.C.O.B.P.M -
Baugalghat - B.C

द्वारा Bibash Ch. Seal (नाम)
द्वारा Bibash Ch. Seal (नाम)
was made over by (name)

(नाम) को
to (name)

Ashim Kr. Seal (नाम)
तारीख को पुकारमें में
अपराह्न

स्थान
at (place)

Baugalghat - B.C

on the (date) 9.10.99 for noon in accordance with
after

सं. No. H378577 dated 29.9.99 -

Bibash Ch. Seal
वारदुकात अधिकारी
Relieved Officer

के अनुसार दे दिया - Galbar
from S.S.P.

.....

Relieving Officer

[३००००००]
[P.T.O.]

29/9/99

* प्रमाणित किया जाता है कि आज के दिन इस कार्यालय की वनेक पुस्तकें के कलता स्टॉक पुस्तक और रजिस्टर समेत) और लेखाओं की और जाच की और उन्हें ठोक पाया ।

* Certified that the balances of this date of the several books (including Stock Book and Registers) and accounts of the office have been checked and found correct.

* प्रमाणित किया जाता है कि निम्नलिखित वकाया मुझे सारमुक्त अधिकारी ने लौप्य दिले और मैं इनके लिए जिम्मेदार हूँ ।

* Certified that the balances as detailed below were handed over to me by the Relieved Officer and I accept the responsibility for the same.

	रु.	प.
(अ) नकदी/Cash	456. 95	
(ब) अग्रदाय टिकट/Stamp Imprest	730. 00	
जिनमें ये शामिल है :—	Re. 120. 00	
Made up of :—		
(1) स्टिकट/Stamps		
(2) नकदी/Cash		
	<u>1306. 95</u>	
	<u>Total</u>	

Bibash Ch Seal - Ashwin K. Deb

भारमुक्त अधिकारी
Relieved Officer

नारायाणी अधिकारी
Relieving Officer

तारीख 19
Dated 9. 10. 1999

Forwarded to Sri... Ashwin K. Deb को सेवा द्वा ।

* जब प्रमाण-पत्र की आवश्यकता न हो तो इसे काट दिया जाए ।

* The Certificate when not actually required may be scored through.

[28-93/66-MI]

I.P.P.M.SDP/L-25/Ptg. 92dt. 30-1-92 10Lacs

Regd

17-11-99

To

The Senior Superintendent of Post Offices,
Cachar Division Silchar.

(Through the Inspector of Post Offices)

Reinstatement of the period of service
of Shri Ashim Kr. Deb, BPM BPM
Banglaghat.

Ref :- (1) Order No. Staff/25-1/98/RP/Loose/
dt/- 15-4-99.

(2) My petition dt/- 11-5-99 to SSP, Cachar
Dm. Silchar.

(3) My prayer petition dt/- 16-8-99 addresse
to the Director of Postal Services, Assam
Region with copy to SSP, Cachar.

(4) SSP's No H3/85-7/7 dt/- 29.9.99
referred to by the Inspector while re-
instating me in Service from 09-10-99
without forwarding any copy to me.

Sir,

I am extremely thankful to your honour
for the kind but delayed implementation of the
appellate Order dt/- 15-4-99 of the learned
Director of Postal Services Assam Region.

The Inspector concerned must be at your behest
contacted me on 09-10-99 and asked me to take
charge of Banglaghat BPM on that very day
quoting a directive letter No. H-3/85-7/7 dt/-
29-9-99 without furnishing any copy to me.
However in obedience to his instruction I took
over charge of BPM Banglaghat on 9-10-99 by
signing the prescribed charge report.

2. As submitted earlier the appellate
order dt/- 15-4-99 setting aside the termination

Attested
V. Debn
Advocate

contd...p2/-

-2-

order dt/- 2-6-98 had the effect of taking me back to my original service from 02-6-98 with all concomitant financial benefits of salary, bonus etc. But I have been paid bonus money of Rs. 622.00 only for the period 21-1-98 to 1-6-98 by excluding the period from 2-6-98. I am shocked to find that my salary for the period 2-6-98 to 31-10-99 has been similarly withheld which will amount to disobedience of the appellate order dt/- 15-4-99 of the Director. As you order of termination dt/- 2-6-98 was totally nullified by setting aside the same without any reservation I ought to be inducted to service on and from 2-6-98 by extending all benefits to me. The Director's order clearly vindicated my rightful position as BPM Banglaghat without any break or hindrance and as such the clearance of my full bonus and full salary from 2-6-98 brooks no further delay. I was ever ready to work as BPM and had not been alienated from duty by departmental fault, there would not have been a case of termination. So the principle of 'no work-no pay' does not apply in my case.

I would therefore most humbly pray for early action for releasing my pay & allowances w.e.f 2-6-98 to 31-10-99 and also due bonus money for the entitled period without any cut.

contd... p3/-

Attested

V.S. AV
Advocate.

-3-

It is also requested that a copy of the order No. H3/85-7/0/Fdt/- 29-9-98 may kindly be supplied to me for my guidance.

Yours faithfully,

Ashim Kumar Deb

Dated
17-11-99.

(Ashim Kr. Deb)
EDP BPPM Banglaghat.
Dist. Cachar.

Attested
W.D.

DEPARTMENT OF POSTS : INDIA
OFFICE OF THE SENIOR SUPDT. OF POST OFFICES
CACHAR DIVISION SILCHAR-788001

Memo No. H3-857/PF

Dated at Silchar the 22-03-2001.

Sanction of the undersigned is hereby accorded for payment of Rs.500.00 (Rupees Five hundred) only being the exgratia one time payment, as per DTE instruction (22) below Rule 4 of service Rule of ED conduct rule.

The expenditure involved in this sanction is debitible to the heads of accounts 3201-G-4-1(C).

This has been issued under the authority of R.O, Guwahati No. Staff/25-1/98/RP(L) dated 02-03-2001.

CSD
(I.C. SARMA)
Sr. Supdt of Post Offices
Cachar Dn. Silchar-788001

Copy to:-

1. The Sr. Postmaster, Silchar H.O for effecting payment. The date of payment may be intimated to this office.
2. The DA(P) Calcutta (through the Sr. P.M, Silchar H.O).
3. Shri Ashim Kr. Deb, BPM, Baglaghat B.O, Via- Srikona S.O.
4. Spare.

File
Sr. Supdt of Post Offices
Cachar Dn. Silchar-788001

Attested
U. D. D.
Advocate.

Dept. of Posts

To the

To

Mr. Ashim Kr. Deb.

B.P.M.

Bangladesh, EDBO.

via - Srikona.

Sr. Supt. of Post Offices
Cachar Dist. Silchar-788001.

No - H3-057/PF - addl. Silchar - 20-12-01

Sub - Representation for regularisation
of the period of service of Mr
Ashim Kr. Deb. B.P.M - Banglachat.

Ref - Your Representation dtch 10-10-01.

With reference to above, I am
directed to intimate you that, there
is no such provision under ED
Rules to regularise your service
and release pay & allowances.

You have already been granted
one time ex-gratia of Rs 500/- (five
hundred). Since the ex-gratia has
been granted to compensate you
for further regularisation of service does not arise.

Attested
Nar

For Sr. Supt. of Post Offices
Cachar Dist. Silchar-788001

29-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

P.P.

In the matter of :-

O.A. No.145 of 2003

Sri Ashim Kr. Deb .. Applicant

Versus-

Union of India & Ors.

... Respondents

WRITTEN STATEMENT FOR AND ON BEHALF OF THE
RESPONDENTS NOS. 1, 2, 3 & 4.

I, J.K. Barbhuiya, Senior Supdt. of Post Offices, Cachar Division, Silchar-788001, do hereby solemnly affirm and say as follows:

1. That I am the Senior Supdt. of Post Offices, Cachar Division, Silchar and as such fully acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement the other contentions and statements may be deemed to have been denied. I authorised to file the written statements on behalf of all the respondents.
2. That with regard to the statement made in paragraph 1 of the application, the respondent beg to state that the applicant applied for the post of Branch Post Master Baglaghat B.O. through Employment Exchange and subsequently selected vide memo No. H3-857/C dtd. 10-1-98 and joined on 21-1-98 (F.N.). Later on in course of review of appointment of the applicant the Postmaster General Guwahati noticed something adverse and directed to cancel the appointment forthwith vide letter No. Staff/RP/6-2/90/pt-II, dtd. 2-6-98 and accordingly termination order was issued by the SSP/SC vide memo dtd. 2-6-98 and the applicant relieved from service on 2-6-98 (F/A). The applicant against the order of termination preferred a representation to the PMG/Guwahati on 23-6-98. The Director, Postal Services Guwahati being appellate authority had disposed of the representation of the applicant

वरिष्ठ डाक अधीक्षक
काशाड मण्डल सिलचर-788001
Sr. Supdt. of Post Offices
Cachar Division, Silchar-788001
J.K. Barbhuiya
Date: 12/03/2003

3

vide memo No. Staff/25-1/98/RP(Loose) dtd. 15-4-99 wherein setaside the order of termination of the applicant and directed to re-instate him in the post of BPM Baglachat. Accordingly the applicant was re-instated in the post again on 9-10-99(F/N) vide SSP/Sc memo No of even no dtd 29-9-99. Thus applicant was not in service w.e.f. 2-6-98 to 8-10-99 and hence treatment as on duty does not arise.

3. That the Respondents have no comments to the statement made in paragraph 2, 3 & 4.1 of the application.

4. That with regard to the statements made in paragraph 4.2 of the application, the respondents beg to state that for recruitment of the post of BPM Baglachat B.O. in a/c with Srikona S.O. under Silchar H.O. the Employment Exchange, Silchar was addressed to sponsor name of suitable candidates and accordingly the Employment Exchange forwarded four(4) applications including the application of the applicant.

5. That with regard to the statement made in paragraph 4.3 of the application, the respondents beg to state that the applicant selected for the post of Branch Post Master, Baglachat vide SSP/Sc memo No. H3-857/C, dtd. 10-1-98 and joined on 21-1-98(F/N).

6. That with regard to the statement made in paragraph 4.4 of the application, the respondents beg to state that in course of review of appointment of the applicant, the PMG, Assam Region Guwahati had noticed something adverse and communicated his decision vide letter No. Staff/RP/6-2/90/p-II, dtd. 2-6-98 and 3-6-98 that the appointment so made by the Sr. Supdt. of Post Offices Silchar totally irregular and directed to cancel the appointment forthwith. Accordingly, the SSP/Sc vide memo dtd. 2-6-98 ordered termination of service of the applicant and he was relieved on 2-6-98(F/N).

7. That with regard to the statements made in paragraph 4.5 of the application, the respondent beg to state that against the order of termination of the applicant had submitted a representation on 23-6-98 to the PMG Assam Region, Guwahati.

Contd. p3-

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8. That with regard to the statement made in paragraph 4.6 of the application, the respondent beg to state that simultaneously, the applicant had moved to the Hon'ble Tribunal, Guwahati and his case was registered under OA No.170/1998. Hon'ble Tribunal, Guwahati bench remit the case with observation since the representation of the applicant not disposed of and six months period was not over did not entertain his application with hope that applicant's application should disposed early.

9. That with regard to the statement made in paragraph 4.7 of the application, the respondent beg to state that the Director of Postal Services, Assam Region, Guwahati had disposed off the representation of the applicant and communicated his decision vide memo No. Staff/25-1/98(RP)(Loose) dtd. 15-4-99 wherein set aside the SSPD/Sc order No. H3-957/PF dtd. 2-6-98 by which applicant was terminated from the post of BPM Baglaghat and directed to re-instate the applicant in the post and accordingly he was re-instated vide memo dtd. 29-9-99 and joined on 9-10-99(F/N).

10. That with regard to the statement made in paragraph 4.8 of the application, the respondents beg to state & that the Director of Postal Services, Guwahati was addressed on 7-5-99 for some clarification towards reinstate the applicant in the post of BPM.

11. That the Respondents have no comments to the statement made in paragraph 4.9 of the application.

12. That with regard to the statements made in paragraph 4.10 of the application, the respondent beg to state that the Director of Postal Service, Guwahati being the appellate authority had disposed off the representation of the applicant vide his memo No. Staff/25-1/98(Loose) dated 15-4-99 wherein set aside the order of termination and directed to re-instate the applicant in the post and accordingly he was reinstated in the post vide SSP/Sc memo of even no dtd. 29-9-99 and joined in the post on 9-10-99(F/N).

13. That with regard to the statement made in paragraph 4.11 of the application, the respondent beg to state that the applicant submitted representation for regularisation of the period of service from 2-6-98 to 8-10-99 which was forwarded to R.O./ Dibrugarh vide SSP/Sc letter of even no dtd. 6-2-2001.

Contd..p/4-

Deb Kishore Dandwata

(4)

14. That with regard to the statement made in paragraph 4.12 of the application, the respondent beg to state that as per instruction of R.O./Guwahati letter No. Staff/25-1/98-RP(L) dtd. 2-3-01 one time exgratia of Rs.500/- (Rupees five hundred) only was granted to the applicant vide this office memo of even no dtd. 22-3-2001 as per Dte instruction(22) below Rule 4 of service rule of ED Conduct Rule.

15. That with regard to the statement made in paragraph 4.13 of the application, the respondent beg to state that as per instruction contained in RO's letter No. Staff/25-1/98/RP(Loose) dtd. 14-12-01, the applicant has intimated that there is no such provision under ED rules to regularise his service and release pay and allowances. He has already granted one time Ex-gratia of Rs.500/-. Since the ex-gratia has been granted to compensate his allowances question for further regularisation of services does not arise.

16. That with regard to the statement made in paragraph 4.14 of the application, the respondent beg to state that not admitted in absence of any specific rules and provisions.

17. That with regard to the statements made in paragraph 4.15 of the application, the respondent beg to state that the applicable appropriate rules were followed while terminating services.

18. That with regard to the statement made in paragraph 4.16 of the application, the respondent beg to state that since there is no provision to pay the full back wages for the period spent not on duty as such an ex-gratia one time payment of Rs.500/- (Rupees five hundred) only was paid to him vide this office letter No. H3-857/PF, dtd. 22-3-01 and there is no further scope of regularisation of the period spent not on duty.

19. That with regard to the statement made in paragraph 5.1 of the application, the respondent beg to state that since there is no provision in the rule to regularise the period of absence from 2-6-98 to 8-10-99 as such the question of payment of TRCA for the said period does not arise.

20. That with regard to the statement made in paragraph 5.2 of the application, the respondent beg to state that there appears no irregularity done by the respondents and since there is no provision in rule to pay full TRCA for the period of absence from duty from 2-6-98 to 8-10-99 as such no full TRCA could be paid to him.

Contd.p/5-

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21. That with regard to the statement made in paragraph 5.3 of the application, the respondent beg to state that as there is no provision for treating the period of absence from duty for the period from 2-6-98 to 8-10-99 is available in rule, the period from 2-6-98 to 8-10-99 could not be treated as duty for all purposes and full TRCA could not be paid.

22. That with regard to the statement made in paragraph 5.4 of the application, the respondent beg to state that as the applicant was not of employment during the period from 2-6-98 to 8-10-99 the period cannot be treated as duty for all purposes, the period will be regularised as leave without any TRCA.

23. That with regard to the statement made in paragraph 6 of the application, the respondent beg to state that since there is no provision in rule for treating the period of absence from 2-6-98 to 8-10-99 the department cannot treat the same as duty.

24. That the respondents have no comments to the statement made in paragraph 7, 8, 8.1, 8.2 and 9 of the application.

25. That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

VERIFICATION

I, J.K. Barbhuiya, presently working as Senior Supdt. of Office Post Offices, Cachar Division, Silchar, being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs 1, 3, 11 & 24 of the application are true to my knowledge and belief, those made in paragraphs 2, 4-10, 12-23 being matter of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the th day
of

Jay Kishore Barbhuiya

DEPONENT

জয়কিশোর বৰুৱায়

জায়কিশোর মন্ত্র সিলচাৰ-৭৮৩০১

St. Supdt. of Post Offices
Cachar Division Silchar-78301

24 MAY 2004

STT 2004
Guwahati Bench

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Filed by
the applicant through
Abul Doss
Advocate
24/05/2004

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA No. 145/03

Sri Ashim Kr. Deb

.....Applicant

-VS-

Union of India & Ors.

.....Respondents

REJOINDER FILED BY THE APPLICANT AGAINST THE WRITTEN STATEMENT FILED BY THE RESPONDENTS:

1. That the applicant has received the copy of the written statement filed by the respondents and has gone through the same. Save and except the statements which are specifically admitted herein below may be treated as total denial. The statement which are not borne on records are also denied.
2. That with regard to the statement made in para 1 of the Written Statement the applicant ~~does not~~ admit anything contrary to the records of the case.
3. That with regard to the statement made in para 2 of the Written Statement the applicant while denying the contention made therein and reiterating and reaffirming the statement made in the OA begs to state that the applicant pursuant to an advertisement dated 28.9.97 issued through the local entertainment channel applied for the post of extra Departmental Branch Post Master. Acting on the representation filed by the applicant the respondents allowed him to appear in the selection test and verified his bio-data. Subsequently the respondents by letter dated 6.1.98 intimated the applicant regarding this selection for the said post.

The applicant pursuant to the letter dated 6.1.98 took over the charge of the Banglaghata Branch Office as Extra Departmental Branch Post Master on 10.1.98 and subsequently on 21.1.98 he submitted his joining report to the respondents.

The applicant while was working as Extra Departmental Branch Post Master (EDBPM) in Banglaghata B.O. received a letter dated 2.6.98 by which the service of the applicant was terminated without any reason. No formal notice was issued prior to issuance of the said order of termination.

The applicant having no other alternative preferred an appeal addressing to the Post Master General, Assam Circle praying for setting aside of the said Annexure-1 dated 2.6.98. However the aforesaid appeal dated 23.6.98 was not entertained by the authority.

The applicant having no other alternative and seeking an urgent and immediate relief approached the Hon'ble Tribunal by way of filing OA No. 170/98 challenging the order of termination dated 2.6.98. The Hon'ble Tribunal after hearing parties to the proceeding was pleased to direct the respondents to dispose of the appeal preferred by the applicant vide its judgment and order dated 27.8.98 in terms of the Apex Court verdict on the subject.

The applicant states that after long persuasion the Director of Postal Services, Assam Region issued an order dated 15.4.99 by which the order of termination dated 2.6.98 was set aside.

In the order dated 15.4.99 passed by the Directorate Postal Services while setting aside the impugned order at 2.6.98 of S.S.P.O's Cachar Division specifically mentioned that no natural justice has been extended to the official in regard to the termination order. Moreover, rules prescribing the procedure to be followed regarding termination of services of ED Agents has

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not been scrupulously followed (Annexure-4 to the OA).

The applicant further begs to submit that since the termination of the applicant was not as per rule and no natural justice was extended to the applicant, the termination order was bad in law. Since the applicant has been illegally deprived of his service hence the statement "the applicant was not in service w.e.f. 2.6.98 to 8.10.99 and hence treatment as on duty does not arise" does not stand in the eye of law and liable to be set aside and quash.

4. That with regard to the statement made in paragraph 3, 4 & 5 of the Written Statement the applicant does not admit anything contrary to the records and begs to rely and refer upon the statement made ~~in~~ above as well as in the OA.

5. That with regard to the statement made in para 6 of the Written statement the applicant while denying the contention made therein and reiterating and reaffirming the statement made above as well as in the OA begs to state that the order dated 2.6.98 passed by the Sr. Supdt. of Post Offices Silchar terminating the service of the applicant per se illegal and not as per law.

6. That with regard to statement made in para 7, 8 & 9 of the written statement the applicant while denying the contention and reiterating and reaffirming the statement made above as well as in the OA begs to state that the applicant against the impugned termination order submitted an appeal on 26.3.98 before the Postmaster General, Assam Circle Guwahati. After 2 months from submission of the appeal by the applicant while no action ^{was taken by the appellate OA No.170/98 before the Hon'ble} ^{authority, the applicant preferred} ^{to} Central Administrative Tribunal seeking urgent and immediate relief. The Hon'ble Tribunal while entertaining the application was pleased to direct the respondents to dispose of the appeal dated 26.3.98 preferred by the applicant as early as possible.

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The applicant begst to state that after 10 months from the date of appeal the Director of Postal Service, Assam Region, Guwahati had dispossed off the appeal of the applicant and communicated his decision vide memo no. Staff/25-1/98/RP (Loose) dated 15.4.99. In the order dated 15.4.99 the Director of Postal Services after going through the case found that no natural justice has been extended to the official in regard to the termination order and not as per rules prescribing the procedure to be followed regarding termination of Services of ED Agents, hence the Director Postal Services set aside the orders no. H3-857/PF dated 2.6.98 of SSPO's Cachar Divison.

7. That with regard to the statement made in para 10 of the Written Statement the applicant humbly submits that the Director Postal Service, Guwahati had disposed of the appeal preferred by the applicant after 10 months and after going through the records of the case by which the termination order was set aside and re-instated in the said post, question of further clarification regarding reinstatement of the applicant does not arise.

8. That with regard to the statement made in paragraph 11 of the Written Statement the applicant begs to state that the respondens have not denied the statement and prefered not to make any comment against the statement made in para 4.9 of the application, which indicates that the respondents have admitted that the SSPO's, Cachar Division kept the matter pending without any reason. The applicant after receiving the order dated 15.4.99 from the Director Postal Services, Assam Region, Guwahati kept on persuing the matter before the respondents by filing representations one after another praying for reinstatement but the respondents did not act on those representations.

9. That with regard to the statement made in 12 of the

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Written Statement the applicant does not admit anything contrary to the records of case and begs to rely and refer upon the statement made above as well as in the OA.

10. That with regard to the statement made in para 13 of the Written Statement the applicant while denying the contention made therein and reiterating and reaffirming the statement made above as well as in the OA begs to state that since the termination of the applicant was illegal and not as per law and violative of natural justice as guaranteed by the constitution of India hence the applicant is entitled for regularisation of the period of service from 2/6/98 to 8/10/99 and arrear salary for the said period as per Apex Court's judgment passed in various cases on the same subject matter.

11. That with regard to the statement made in paragraph 14 of the Written Statement the applicant while denying the contention made therein and reiterating and reaffirming the statement made above as well as in the OA, begs to state that the case of the applicant does not cover vide the office memo of even no dated 22.3.2001 as per the instruction (22) below Rule 4 of service rule of ED conduct rule. Because the above noted Rules apply when the question of payment of some compensation or ex-gratia to such ED Agents as once placed under put off duty pending finalization of disciplinary proceedings are completely exonerated after the disciplinary proceedings or reinstated in ED posts on acceptance of their appeals or review petitions after full exoneration has been engaging the attention of the Directorate for sometime past. But, in case of the present applicant neither disciplinary proceeding was pending against him nor he was not placed under put-off duty. The respondents have failed to apply their mind in case of the present applicant. The question of granting ex-gratia Rs.500/- (Rupees five hundred)

-39-
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only to the applicant does not arise. In fact, the petitioner entitled for full back wages and continuation of service along with all other service benefits.

A photocopy of the said rule is annexed herewith and marked as Annexure-I.

12. That with regard to the statement made in paragraph 15 of the written statement the applicant while denying the contentions made therein begs to state that the case of the applicant does not fall under the Rules applied by the respondents.

13. That with regard to the statement made in paragraph 16 of the written statement the applicant while denying the contention made therein begs to rely and refer upon the statement made in the OA. The applicant further states that it is a settled position of law that when the termination is not as per law and thereafter when any court of law or Appellate Authority passes order setting aside the order of termination as illegal, arbitrary and as violative of natural justice as guaranteed by the constitution of India than he is entitled for regularisation of the period of service covered under the termination order and full back wages and other consequential service benefits for the entire period.

14. That with regard to the statement made in paragraph 17 of the written statement the applicant while denying the contentions made therein begs to state that no specific rules and provisions have been applied in terminating the service of the applicant which is apparent from the order dated 15.4.99 passed by the Director of Postal Services wherein the Director Postal Service specifically stated that no natural justice has been extended to the applicant in regard to the termination order and no rules prescribing the procedure to be followed regarding

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termination of services of ED Agents has been scrupulously followed.

15. That with regard to the statement made in paragraph 18 to 25 of the written statement filed by the respondent the applicant while denying the contentions made therein and reiterating and reaffirming the statement made above as well as in the OA begs to state that after setting the impugned order of termination by the Director of Postal Services, Cachar Division, Silchar did not take any steps in reinstating the applicant against the said post. In the order dated 15.4.99 the Director of Postal Services specifically mentioned while terminating the services of the applicant that the Sr. Supdt of Post offices, Cachar Division, Silchar did not follow the rules prescribed regarding termination of Services of ED Agents and no natural justice was extended to the applicant, hence the order of termination dated 2.6.98 was illegal, begs to state that the applicant did not voluntarily kept himself absent from duty but the Respondents, who illegally deprived the applicant in performing his duty for the entire period from 2.6.98 to 9.10.99. It is pertinent to mention here that even after setting aside the termination order dated 2.6.98 by the Director of Postal Services the respondents did not take any steps in reinstating the applicant immediately against the said post. Against the inaction the applicant preferred number of representations to the Respondent no.3. But the respondent No.3 has chosen not to act upon the order dated 15.4.99 passed by the Director Postal Services and on the representations filed by the applicant. After Long 6 months from the date of order of reinstatement the Respondents reinstated the applicant on 9.10.99 (Annexure-7 to the OA). The humble applicant begs to state that the applicant has to suffer a lot for no fault of him. The Respondents are

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solely responsible for such illegalities and suffering of the applicant. There are various Apex court's judgment wherein the Apex court affirmed that if any Govt. Employee has been terminated and subsequently the termination order has been set aside by any court of law or by Appellate authority then the employee is entitled for full back wages for the said termination period and the whole period must be treated as on duty for all purposes *relating to his service conditions*.

16. That in the above facts and circumstances the present Original Application is liable to be allowed with exemplary cost on the persons who are responsible for such injustice to the applicant.

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VERIFICATION

I, Sri Ashim Kumar Deb, son of Late Anil Ch. Deb, aged about 32 years, at present working as EDBPM in Banglachat Branch Office, Dist. Cachar, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 4, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 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4. Pension

The employees shall not be entitled to any pension.

DIRECTOR-GENERAL'S INSTRUCTIONS

(1) **Payment of *ex gratia* gratuity.**—The question of grant of some kind of purely *ex gratia* monetary grant to ED Agents working in the Indian Posts and Telegraphs Department on termination of their services has been under consideration for a long time. It has been decided as follows:—

1. ED Agents as defined in P. & T Extra-Departmental Agents (Conduct and Service) Rules, 1964, whose services are terminated otherwise than (i) for unsatisfactory work or (ii) as a measure of disciplinary action or (iii) in consequence of their being appointed in a regular post under the P & T Department, may be sanctioned monetary grants termed as 'Gratuity', provided that they have put in not less than ten years of continuous satisfactory service as ED Agents.

2. "Continuous Service" for the purpose of this order shall mean only such continuous service rendered in any capacity as an ED Agent.

3. In determining the period of continuous service, periods where an ED Agent himself does not personally attend to the duties assigned to him shall be treated as breaks in service unless each such period is of a duration of 90 days or less and the absence from his duties is authorized by the written order of the appointing authority.

4. Unauthorized absence or authorized absence in excess of 180 days shall constitute a break which will have the effect of forfeiting all past service for the grant of gratuity.

5. An ED Agent, who becomes eligible for the grant of gratuity as indicated above, may be granted at the rate of half month's basic allowance as drawn by him immediately before the termination of service for each completed year of service, subject to a maximum of Rs. 18,000 or 16 $\frac{1}{2}$ months' basic allowance last drawn, whichever is less.

6. Gratuity admissible in accordance with the above conditions shall be purely *ex gratia*.

[D.G., P. & T., Letter Nos. 43-48/64-Pen., dated the 16th January, 1968; 60-330/70-Pen., dated the 20th August, 1971; 40-238/73-Pen., dated the 6th February, 1974; 40-48/78, dated the 6th October, 1979; 43-23/80-Pen., dated the 20th February, 1980; 40-58/78-Pen., dated the 14th August, 1980; 40-29/87-PE. II, dated the 15th July, 1987, 40-29/87-PE. II, dated the 24th September, 1987 and 40-29/87-PE. II/ED & Trg., dated the 7th January, 1993.]

(2) **DPS empowered to condone the period of absence.**—The power to condone the period of absence beyond the maximum permissible period of leave shall be exercised by the Director of Postal Services in the Circle Office.

[D.G., P. & T., No. 43-240/78-Pen., dated the 4th May, 1979.]

(3) **In case of discharge due to physical/mental unfitness.**—An ED Agent may be discharged before the age of 65 years if physically or mentally unfit or if he is found to be unfit to discharge the responsibilities placed on

him. As regards admissibility of *ex gratia* gratuity to ED Agents thus discharged, the procedure in (1) above may be followed.

[D.G., P&T., No. 43-23/80-Pen., dated the 20th February, 1980.]

(4) **Period of participation in All India Sports Meet to be treated as duty for continuity of service for gratuity.**—Attention is invited to Letter No. 11-9/87 (WL-Sports), dated 26-10-1989, wherein orders were issued that the period of participation of EDAs and Casual Labour in All India Postal Sports Meets will be treated on duty only for the purpose of eligibility for appearing for the Departmental Examination.

Pursuant to the meeting of the Postal Sports Meeting held on 23-2-1990, the matter was further examined in consultation with ED & Trg. section of the Directorate and it has been decided that the period of absence of EDAs due to participation in All India Postal Sports/Cultural Meets will be treated as on duty for the purpose of continuity of their service for grant of *ex gratia* gratuity.

[D.G., Posts, No. 11-9/87 (WL-Sports), dated the 25th April, 1991.]

(5) **Procedure for grant of *ex gratia* gratuity.**—The following instructions are issued for the guidance of all concerned:—

2. **Personal File.**—Every appointing authority should, with immediate effect, maintain a personal file in respect of every ED Agent in which copies of orders relating to the service of the ED Agent such as appointment orders, leave sanction, orders imposing penalties, etc., should be kept arranged in chronological order. In the case of those already in service on the date of receipt of this order, attempts should be made to collect copies of all such orders issued previously till that date and keep them in the personal file. From this file, a "Record of Service" in the form shown in Annexure-I should be prepared as soon as the ED Agent completes 15 years' service. The term 'leave' used in this form should be taken to mean periods during which, with the approval of the appointing authority, the ED Agent is permitted not to perform the duties of his post personally but to have those performed through an approved substitute. Any periods during which it is found that the ED Agent himself does not perform his duties personally and has entrusted them to some other person without the approval of the appointing authority should be treated as unauthorized absence, for the purpose of computing total service eligible for gratuity. The Record of Service should be kept up to date by making entries in it whenever necessary.

*3. **Application Form.**—A form of application has been prescribed for submission by EDAs whose services are terminated and who are eligible for receipt of gratuity and is appended to this Instruction. This application is to be submitted to the Superintendent of Post Offices concerned who will forward it to the Head of the Circle concerned with a covering letter as indicated below.

* It is the duty of the Appointing Authority to obtain the application for gratuity - See Instruction No. (13).

Attested
Under
Adm. seal

(17) **Period of irregular retention of EDAs beyond 65 years will not count for purposes of gratuity.**—It has come to the notice of the Director-General that in certain Circles, EDAs have been retained beyond 65 years of age irregularly, generally due to some lapse on the part of the administrative/appointing authority concerned. It is the responsibility of the administrative authority concerned to ensure that no EDA under his jurisdiction is kept on in service beyond the prescribed age-limit, unless prior approval of the P & T Directorate for such retention is obtained. It is, therefore, desired that relevant records should be maintained and reviewed properly and the EDAs who attain the age of 65 years should not be retained beyond the age of superannuation. Each case of such irregular retention should be investigated and responsibility fixed.

Further, it is hereby clarified that the period of irregular retention beyond 65 years of age even after regularization of the period of such retention will not count for purpose of grant of *ex gratia* gratuity.

[P. & T. Board, Letter No. 40-9/82-Pen., dated the 26th June, 1982.]

(18) **Action to be taken against the officials responsible for irregular retention.**—Of late, instances of retention of EDAs beyond dates of superannuation is on the increase. Heads of Circles often approach the Directorate for *ex post facto* approval. In future, routine *ex post facto* sanction of such cases by Directorate will not be possible. Whenever it is found that ED Agents have been retained beyond 65 years due to any lapse on the part of the Sub-Divisional/Divisional Authorities, Heads of Circles will take action against the officials responsible for such irregular retention. Cases referred to Directorate for condonation of irregular retention should invariably indicate the action taken against officials found responsible.

[D.G., Posts, Letter No. 40-4/87-PE-II, dated the 25th May, 1987.]

(19) **Maintenance of records to prevent irregular retention beyond 65 years.**—With a view to ensure timely discharge, a register containing the dates of birth, dates of appointment and dates of superannuation of the EDAs should be maintained by the respective appointing authorities. The appointing authorities after scrutinizing the register once every month should intimation the EDAs concerned, at least six months in advance, the date on which they would be completing the age of 65 years and also inform them that they would cease to be agents after the said date. Formal orders terminating their services should also issue well in time.

Further action should also be initiated for selection of new incumbents at least three months in advance so that the time lag between the discharge of the previous EDA and employing of new EDA is altogether eliminated. The register referred to above to be maintained by the appointing authorities should be test-checked by the Inspecting Officers in the course of inspection of the offices.

The instructions referred to above will be in addition to those already prescribed in Letter No. 5-4-72-ED Cell (I), dated 18-8-1979.

[D.G., P. & T., Letter No. 40-9/82-Pen., dated the 8th December, 1983.]

(20) **No payment of *ex gratia* gratuity to ED Agents irregularly retained beyond 65 years.**—Some instances have come to the notice of this office where proposals for regularization of unauthorized retention in service beyond the prescribed age of 65 years have been forwarded to this office after payment of the due amount of *ex gratia* gratuity. This is irregular and the Finance Advice Branch with whom the proposals were taken up have taken a very serious view of this irregularity.

2. A perusal of the proposals received in this office also indicated that quite a long period is allowed to lapse before such proposals are taken up. This has also been objected to by the Finance Advice Branch.

3. Experience has also shown that when the proposals are taken up with this office after a lapse of unduly long period, adequate care is not taken to send the service particulars of the ED Agents along with the particulars of the official/officer responsible for the lapse and detailed reasons for irregular retention, etc. It is also found that such irregularities on the part of the officials concerned are being taken casually and the officials are being allowed to go out free even after repetition of the same lapses in a number of cases. It is felt that unless deterrent action for such repeated failures on the part of the concerned official is taken, there is no likelihood of the situation improving.

4. You are requested kindly to suitably instruct all concerned that payment of *ex gratia* gratuity is not made to the concerned ED Agents, unless sanction for regularization of the irregular retention in service beyond the age of 65 years is obtained from the competent authorities and the proposals sent to this office are complete in all respects.

[D.G., Posts, Letter No. 17-78/92-ED & Trg., dated the 31st May, 1993.]

(21) **Maintenance of gradation lists of Extra-Departmental Agents at Divisional level.**—Orders already exist for maintenance of service records of the ED Agents for determining their eligibility for grant of *ex gratia* gratuity, length of service for the purpose of taking the recruitment test for induction in regular Group 'D'/Postmen Cadres, etc.

Having regard to the fact that the maintenance of gradation lists of the ED Agents at Divisional levels would help in prompt disposal of cases relating to *ex gratia* gratuity, and verifying length of service for the purpose of appearing in the recruitment test, etc., it has been decided that immediate action may be taken to prepare the gradation lists of all the Extra-Departmental Agents at Divisional levels and copies of the same made available to all the recognized service unions. Since along with retirements, etc., there will be fresh recruitments also in the ED cadres from time to time, the gradation lists will have to be kept updated periodically and copies of the updated gradation lists also supplied to the recognized service unions concerned.

[D.G., Posts, Letter No. 17-307/91-ED & Trg., dated the 27th November, 1991 and 18-41/91-ED & Trg., dated the 15th March, 1992.]

(22) **Payment of Compensation *ex gratia* to ED Agents completely exonerated.**—The question of payment of some compensation on *ex gratia*

12
to such ED Agents as are placed under put-off duty pending finalization of disciplinary proceedings and are completely exonerated after the disciplinary proceedings or reinstated in ED posts on acceptance of their appeals or review petitions after full exoneration has been engaging the attention of this Directorate for sometime past.

2. Having regard to all relevant considerations, it has now been decided that such of the ED Agents as are completely exonerated on conclusion of disciplinary proceedings or reinstated in service on acceptance of their appeals or review petitions by the competent authority after full exoneration, will be paid *ex gratia* one-time payment of the allowance of the ED Agents concerned for the period of put off duty subject to a maximum of Rs. 500—irrespective of the period for which the ED Agents remained under the put-off duty. No compensation *ex gratia* will, however, be payable to the ED Agents whose cases are finalized within the prescribed period of 45 days and on full exoneration they are reinstated in service. The payment of this *ex gratia* would be without prejudice to the SLP pending scrutiny before the Supreme Court and, subject to the condition that it would be paid up to the date the decision of the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 13989-1 of 1989 against CAT, Bangalore Bench judgment in OA filed by Peter JD. SA v. Union of India and others, etc., becomes available and will also be subject to review in the light of the Honourable Supreme Court.

3. These orders will come into force from the date of issue.

4. This issues with the concurrence of Finance Advice Branch *vide* their Dy. No. 1309/FA/94, dated 21-4-1994.

[D.G., Post, Letter No. 16-156/92-ED & Trg., dated the 24th April, 1994 and corrigenda dated the 27th July, 1994].

5. Leave

The employees shall be entitled to such leave as may be determined by the Government from time to time:

Provided that—

- (a) where an employee fails to resume duty on the expiry of the maximum period of leave admissible and granted to him, or
- (b) where such an employee who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave,

he shall, unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 8.

DIRECTOR-GENERAL'S INSTRUCTIONS

- (1) Leave of 10 days for every half year.—Extra-Departmental Agents may be granted paid leave at the rate of 10 days for every half year, but there