

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

4

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 70/2004

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2
SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Org.App/ Misc.Petn/Cont.Petn/ Rev.App. 70/04

In O.A.

Name of the Applicant(s) Atul Kalita

Name of the Respondent(s) U.O. I Toms

Advocate for the Applicant M. Chanda, G.N. Chakrabarty, S.Nath

Counsel for the Railway/ C.G.S.C. ✓

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

22.3.2004

Heard Mr. M. Chanda, learned
counsel for the applicant.

The application is admitted, call
for the records. Issue notice to the
parties.

List on 10.5.2004 for orders.

Pendency of this application shall
not be a bar to consider the case of
the applicant.

Steps not taken

K.D. Bhattacharya
Member (A)

mb

Notice & order dt. 22/3/04
sent to D/Section for
issuing to respondent
nos 1 to 4.

(M.J. Moh)
26/3/04

04/06/04

Notice sent by memo
No. 576 - 579 dated
29.3.04.

WJ
8/4/04

F. 5-04
Penua Reports awaited.

1m

Member (A)

Member (J)

bb

14.6.04.

The learned counsel for the applicant prays for adjournment to get instructions from his Sr. counsel. Let this case be listed on 16.6.04 for orders.

Member (A)

Member (J)

1m

16.6.2004 Present: The Hon'ble Smt. Bharati Roy
Member (A)

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

Mr.A.Deb Roy, learned Sr.C.G.S.C. seeks four weeks time to file counter reply and for production of records. Matter be posted on 16.7.2004 for orders.

Member (A)

Member (J)

bb

22.7.2004 present: The Hon'ble Shri K.V.Sachidanandan
Member (J).

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

When the matter came up for hearing, Mr.A Deb Roy, learned Sr.C.G.S.C. submitted that he would like to have three weeks more time file reply statement. Let it be done. List on 17.8.2004 for orders.

Member (A)

Member (J)

bb

17.8.2004

Four weeks time is given to the respondents to file written statement. List on 22.9.2004 for orders.

30.8.04

W/s filed by the respondents.

KV Duttar
Member (A)

mb

22.9.04.

Shri
The learned counsel for the parties is present.

The applicant may file rejoinder in case they so desires, if any. The matter be listed for hearing after Puja Vacation. Stand over to 16th Nov. 2004.

KV Duttar
Member

R
Vice-Chairman

30/11/04

1) W/s has been filed.
2) No respondent has been filed.

*W/S
30/11/04*

AM 13/12

lm

1.12.04

Heard counsel of both sides. Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

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

17.12.04

*Copy of the Order
has been served to
the D.C.A. for
issuing the notice
to the applicant*

KV Duttar
Member

R
Vice-Chairman

pg

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A. No. 70 of 2004

DATE OF DECISION 1-12-2004

Shri Atul KalitaAPPLICANT(S)

Sri S.NathADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

Union of India & Ors.RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C.ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. 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 *YB* judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other benches ?

Judgment delivered by Hon'ble Vice-Chairman

NO

6

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 70 of 2004.

Date of Order : This the 1st Day of December, 2004.

The Hon'ble Mr Justice R.K.Batta, Vice-Chairman.

The Hon'ble Mr K.V.Prahladan, Administrative Member

Shri Atul Kalita,
Vill. Indira Nagar, Tezpur,
P.O. & P.S. Tezpur,
Dist. Sonitpur, Assam

... Applicant

By Advocate Sri S.Nath.

- Versus -

1. Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Finance, Deptt. of Revenue,
New Delhi.

2. The Commissioner,
Central Excise,

Shillong.

3. The Assistant Commissioner,
Central Excise,
Tezpur Division, Tezpur,
Dist. Sonitpur, Assam.

4. The Superintendent,
Central Excise, Mangaldai Range,
Mangaldai,
Dist. Darrang, Assam

... Respondents

By Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

BATTA. J.(V.C)

Heard Sri S.Nath, learned counsel for the applicant
and Sri A.Deb Roy, learned Sr.C.G.S.C for the respondents.

2. The applicant is seeking directions to set aside the
termination of his service and for re-engagement as casual
labourer as also regularisation. In para 4.6 of the
application it is stated that the applicant submitted
representation on 9.10.2003 and another representation on
23.10.2003 but the same have not been decided. In our view the
application can be disposed of with a direction to dispose of

Q -

the said representations and in case the applicant wants to make any further representation, the same be filed within one month from today. The said representations dated 9.10.2003, 23.10.2003 and any further representation filed within one month from today be considered and disposed of by reasoned and speaking order by the respondents. *within 4 months of receipt of this order without fail.*

The application stands disposed of in the aforesaid terms.

KV Prahadan
(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER

R
(R.K.BATTA)
VICE CHAIRMAN

19 MAR 2004

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

O.A. No. 70 /2004

Shri Atul Kalita

VS-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

05.02.1999- Applicant was interviewed for being engaged as Casual Worker.

22.02.1999- Pursuant to the selection in interview, order dated 22.02.1999 was issued by the Respondents engaging the applicant as casual worker for an initial period of three months which was subsequently extended from time to time.

01.03.1999- Applicant joined as Casual worker on 01.03.1999 at Tezpur. Prior to that he served as Canteen Manager of Central Excise Divisional Office, Tezpur.

01.09.1999- Applicant joined under Mangaldoi Range, Mangaldoi in the Respondent Department, since he was transferred from Tezpur to Mangaldoi. Since his joining in the respondent department, he had been working continuously w.e.f 01.09.1999, although in different spells.

28.05.2003- Order issued by the Respondents engaging the applicant as Casual Worker in the last spell

Sri Atul Kalita

for a period of 88 days from 28.05.03 to 22.08.03.

23.08.2003- Service of the applicant was terminated by a verbal order of the Respondent No.4, whereas the applicant was appointed by the Respondent No.3.

09.10.2003- Applicant submitted representations praying

23.10.2003- for his re-engagement and regularization of service but with no result.

Hence this Original Application before the Hon'ble Tribunal.

P R A Y E R S

Relief(s) sought for:

Under the facts and circumstances stated in the application the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

1. That the termination of service of the applicant be declared as illegal and void.
2. That the respondents be directed to re-engage the applicant as Casual labour and to further regularize his service.
3. Costs of the application.
4. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

sri Atul Kalita

Interim order prayed for.

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

That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall not be a bar to the respondents for considering the representations of the applicant.

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sri Atul Kalita

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

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Filed by the Applicant
through Mr. Sunil Choudhury
Advocate
xx 19 2 2004

Title of the case : O. A. No 70 /2004

Shri Atul Kalita : Applicant

- Versus -

Union of India & Others: Respondents.

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Filed by

Sunil Choudhury

Advocate

Date: 19. 3. 2004.

Sri Atul Kalita

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O. A. No. _____/2004

BETWEEN

Shri Atul Kalita
Vill. Indira Nagar, Tezpur.
P.O and P.S Tezpur.
Dist. Sonitpur, Assam.

Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Finance, Department of Revenue
New Delhi.
2. The Commissioner,
Central Excise,
Shillong.
3. The Assistant Commissioner,
Central Excise,
Tezpur Division, Tezpur.
Dist. Sonitpur, Assam.
4. The Superintendent,
Central Excise, Mangaldai range,
Mangaldai
Dist. Darrang, Assam

... Respondents.

Sri Atul Kalita

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made not against any particular order but against the dismissal of the applicant from his services as Casual Labour, whereas his juniors have been retained in the service.

2. Jurisdiction of the Tribunal.

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

3. Limitation.

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

4. Facts of the Case.

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That your applicant was initially appointed as Casual Worker in the respondent department vide order No. II (3) 4/ET/ACT/97/173-79 dated 22.02.1999, pursuant to

Sree Atul Kalita

which he joined on 01.03.1999 in the office of the Assistant Commissioner, Central Excise, Tezpur. Subsequently he was posted at Mangaldoi under the Mangaldoi Range, Central Excise and he joined at Mangaldoi on 01.09.1999.

(Copy of the order dated 22.02.1999 is annexed hereto as ANNEXURE-I).

4.3 That prior to his joining as Casual Worker, the applicant was working as Canteen Manager of Central Excise, Divisional Office, Tezpur for three years where he rendered good service as evident from the Certificate dated 31.03.1998 issued by the Assistant Commissioner, Central Excise, Tezpur..

(Copy of the certificate dated 31.03.1998 is annexed hereto as ANNEXURE-II).

4.4 That the applicant was appointed as Casual Worker w.e.f 01.03.1999 as stated in para 4.2 above through a formal selection process. The applicant having applied for the job, was formally interviewed on 05.02.1999 and was selected following which he was appointed vide order dated 22.02.1999 (Annexure-I) for an initial period of three months. Thereafter his terms of engagement was extended from time to time and was lastly engaged for a period of 88 days from 28.05.2003 to 22.08.2003 vide order No. II (3)4/ET/ACT/99/755 dated 28.05.2003.

(Copy of the initial interview call letter dated 21.01.1999 and last engagement order dated

Sree Atul Kalita

28.05.2003 are annexed hereto as ANNEXURE- III (Series).

4.5 That it is stated that the applicant served as Canteen Manager in the respondent department for long three years till 1998 and thereafter served as Casual labour w.e.f 01.03.1999 to 22.08.2003 as stated herein above. As Casual worker, the applicant rendered his service continuously although in different spells, and as such he had rendered his service for years together and that too with satisfaction of all concerned.

4.6 That surprisingly, the Superintendent of Central Excise, Mangaldoi Range, by a verbal order, terminated the services of the applicant w.e.f 23.08.2003 without any reason and without giving any reasonable opportunity to the applicant. The applicant thereafter submitted representation on 09.10.2003 praying for his re-engagement as casual labour and further submitted another representation on 23.10.2003 with the same prayer but with no result.

(Copy of representations dated 09.10.2003 and dated 23.10.2003 are annexed hereto as ANNEXURE-IV and V respectively).

4.6 That the applicant most respectfully begs to submit that he is the only earning member in his family and his son and daughter have been appearing in the H.S.L.C examination, 2003-04. Sudden termination of his services after satisfaction performance for years

Sree Atul Kalita

together, has thrown his family into extreme distress. The applicant hails from a very poor family and with no earning now; he is finding it extremely difficult to maintain and support his family and not to speak of the education of his children.

4.7 That it is stated that the persons who were engaged as casual labour much later than the applicant and who are pretty junior to the applicant in terms of joining the department, have been retained by the Respondents whereas the services of the applicant have been terminated without any reason. It is relevant to mention here that Shri Sanjib Kumar Nath and Smti Mili Das who joined on 30.01.2002 and 30.11.2002 respectively in the respondent department have been retained by the Respondents, whereas the applicant in spite of his joining as back as on 01.03.1999 has been terminated which is arbitrary, unjust, illegal, malafide and violative of all principles of law and natural justice.

4.9 That it is a settled position of law that a senior person cannot be terminated, retaining junior persons which is one of the elementary principles of service jurisprudence and as such the respondents acted in an arbitrary and discriminatory manner which is violative of the Article 14 and 16 of the Indian Constitution.

4.10 That due to illegal termination of his service, the applicant is not in a position to earn the livelihood

sri Ateel Kalita

for his family and the entire family has plunged into a complete wretched condition. As such finding no other alternative, the applicant is approaching this Hon'ble Tribunal for protection of his legitimate rights and it is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interests of the present applicant directing the Respondents to re-engage the applicant as a casual worker and to further regularize his services.

4.11 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that, the applicant has served continuously for more than three years as Casual labour and as such has acquired a valuable right for continuation and further regularization of his service in the respondent department.

5.2 For that, the applicant was engaged as Casual labour following formal interview and selection and in terms of the appointment letter dated 22.02.1999 (Annexure-I).

5.3 For that, termination of his service by a verbal order of the Superintendent of Central Excise is illegal, malafide and arbitrary when the applicant was appointed by the Assistant Commissioner of Central Excise.

sri Atul Kalita

5.4 For that, the persons junior to the applicant were retained in service whereas the applicant in spite of being senior has been terminated which is violative of the principles of natural justice and against the settled principles of law.

5.5 For that, the action of the respondents is discriminatory and violative of the Article 14 and 16 of the Constitution of India.

5.6 For that, the applicant hails from a very poor family and is the sole bread earner for his family and at this age he will not be able to get a new job elsewhere.

5.7 For that the applicant submitted representations praying for his re-employment but failed to get justice.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

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

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of

Sri Atil Kalita

this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1** That the termination of service of the applicant be declared as illegal and void.
- 8.2** That the respondents be directed to re-engage the applicant as Casual labour and to further regularize his service.
- 8.3** Costs of the application.
- 8.4** Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

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

Sri Atul Kalita

9.1 That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall not be a bar to the respondents for considering the representations of the applicant.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No. : 11 G 378546.
ii) Date of Issue : 9.3.04.
iii) Issued from : G.P.O. Guwahati.
iv) Payable at : G Po. Guwahati.

12. List of enclosures.

As given in the index.

sri Ateel Kalita

VERIFICATION

I, Shri Atul Kalita, S/o Late Dandiram Kalita, aged about 30 years, resident of Vill- Indira Nagar, Dist- Tezpur, P.O & P.S- Tezpur, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 19th day of March, 2004.

Sri Atul Kalita

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ANNEXURE-I

OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE :: TEZPUR.

O R D E R. Dated, Tezpur, the 22nd Feb/99.

The Assistant Commissioner, Central Excise, Tezpur is pleased to engage the following candidates as Casual Workers on daily wage basis (8 hours per day) for 3 (three) months with effect from 1st March '99 on contract basis. The duties are not of regular nature, but on "NO WORK NO PAY" basis.

Either of the party can terminate the contract without assigning reason. The contract does not lead to establishment of any relationship with the employer.

NAME & ADDRESS.

1. Sri Atul Kalita.
Vill:- Indira Nagar.
P.O.-Tezpur.
Dist:- Sonitpur,

2. Sri Gaurmoni Singha.
C/O Sri Sri Kanta Sharma.
Hem Nagar. P.C.:- Maha Bhairab.
Dist :- Sonitpur (Assam)

3. Md. Mamotaj Ali.
C/C:- Late Ajilur Ali.
Harigaon.
P.O:- Nikamol (Tezpur.)
Assam.

S/1

(B.K. ROY.)
ASSISTANT COMMISSIONER
CENTRAL EXCISE, TEZPUR.

C.No.II(3)4/PT/ACT/97/ 173-79

Dated:- 22/2/99

Copy forwarded for information and necessary
action to :-

1. The Deputy Commissioner(P&V)
Customs & Central Excise, Shillong.

2. Sri Atul Kalita. Vill:- Indira Nagar. P.O. Tezpur. Dist:- Sonitpur. He is posted to at Mangaldai Range under Tezpur Division.

3. Sri Gaurmoni Singha. C/O Sri Srikanta Sarmah. Hem Nagar. P.O. Maha Bhairab. Dist:- Nikamol. (Tezpur). He is posted to Central Excise Divisional Office Tezpur.

Waded
Surya
19.3.99
JG

4. Md. Mamataj Ali, C/o. Late Ajijur Ali, Hennagar.
P.O. Nikamol, (Tezpur.) He is posted at the Central Excise
Divisional Office, Tezpur.
5. The Cash Branch, Central Excise, Tezpur.
6. The A.M.R.O. Central Excise, Tezpur.
7. The Superintendent, Central Excise, Nongdakai Range.

B.K. Roy
(B.K. Roy.)
ASSISTANT COMMISSIONER
CENTRAL EXCISE, TEZPUR.

22.2.79

ANNEXURE - II

TO WHOM IT MAY CONCERN

Certified that Sri Atul Kalita S/o Late Dandiram Kalita, inhabitant of Indira Nagar, Tezpur, Dist. Sonitpur(Assam) has been working as Canteen Manager of Central Excise, Divisional Office, Tezpur for the last 3(three) years.

I found him a good moral character and wishes him a successful life.



Atul Kalita
Asst. Commissioner
Central Excise Tezpur
ASSISTANT COMMISSIONER
CENTRAL EXCISE :: TEZPUR

Atul Kalita
Swami Adv. (Advocacy)
17.3.2009

OFFICE OF THE ASSISTANT COMMISSIONER

CENTRAL EXCISE :: TEZPUR.

ANNEXURE-III (series)

C.NO.II(12)ET/ACT/93/ 153-59

Dated :- 21-1-99

To,

sri Atul Kachua,
vill:- Indira Nagar.
P.O.:- Tezpur
Dist.:- Sonitpur-(Assam).

Sub:- Appointment of Casual Worker.

Please refer to your application dated, 12.1.99 on
the above mentioned subject.

You are requested to attend before the Assistant Commi-
ssioner, Central Excise, Tezpur for interview on 05.02.99 at
11.00 hours positively with all certificate/documents.


(A.B.DUTTA.)

ADMINISTRATIVE OFFICER
CENTRAL EXCISE: TEZPUR.

Address
Sanghitarashay
on 19.3.2004

OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE: TEZPUR

ORDER

Dated: - 27.5.03

The undersigned is pleased to re-engage Sri Akel Kelle
Son of late D.B.Kelle of village Sonai Nagar
P.O. Mangaldoi Dist. Soniapuri Assam as a casual
worker i.e. farash on contract basis for 8 (eight) hours work day for
a period of 88 days w.e.f. 27.5.03 to 22.8.03
at Divisional Office Central Excise, Mangaldoi Range on 'NO WORK
NO WAGES' basis. He /she will be paid @ Rs. 88.00 per day for on
his/her works. This re-engagement is on purely temporary basis.
His/her engagement may be terminated at any prior notices him/her.

This order stands valid upto 22.8.03 unless terminated
earlier.

Sd/- (S.K.DAS)
ASSISTANT COMMISSIONER
CENTRAL EXCISE: TEZPUR.

C.NO. II(3)4/ET/ACT/99/ A)

Dated: - 28.5.03

Copy for information and necessary action to:-

1. The Additional Commissioner(P&V), Customs & Central Excise,
Shillong.2. Sri. Akel Kelle vill/tem Mangaldoi Range
P.O. Mangaldoi Dist. Darrang

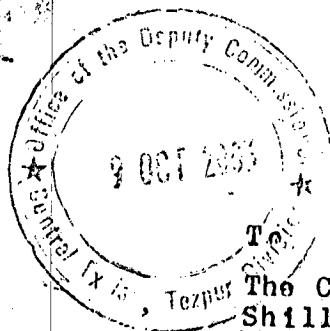
3. The Cash Branch, Rxk Central Excise, Tezpur.

4. The A.P.R.O. Central Excise, Tezpur.

5. To The Superintendent - Mangaldoi

*Present
Sark
Divide
19.5.03*

(S.K.DAS)
ASSISTANT COMMISSIONER
CENTRAL EXCISE: TEZPUR.



To
The Commissioner of Central Excise,
Shillong.

Through proper channel.

Sir,

Subject: Representation for re-engagement
and regularisation of Service as
Casual labour.

Most respectfully and humbly, I beg to submit the following representation for favour of your kind and sympathetic consideration.

2. That I was appointed as Assistant Excise and order dated 22/2/99 issued by the Assistant Commissioner of Central Excise, Tezpur and I joined on 1.3.99 in the Office of the Assistant Commissioner Central Excise, Tezpur. Since the copy of the order has been lost, a copy of my application duly forwarded by the Supdt. Central Excise, Mangaldai Range for the purpose of refurnish to the date of 01-3-1999 is inclosed as Annexure I.

3. That subsequently I was posted to Mangaldai Range, Central Excise vide order dated 10-9-1999 and I joined there on 01-9-1999. A photocopy of the order is annexed hereto as (Annexure I)

4. Since the date of my appointment i.e. from 1.3.99 I am serving in the department continuously although time to time my service were re-engaged by the Assistant Commissioner of Central Excise, Tezpur.

Contd.....2..

*Abasled
Surjil Chaudhury
Advocate
Dated 19.3.2009*

5. The guide lines for recruitment of casual worker in Central Govt. offices were given vide Govt. of India's O.M.No. 49014/2/86-Estt.(e) dated 7.6.1988. It has been further reviewed in view of the Judgement of the CAT principal Bench, New Delhi on 16.2.1990 and it has been decided that the existing guide lines contained in O.M. dated 7.6.1988 may continue and in addition to that casual employees who have rendered one year continuous service in Central govt. offices except Telecom, Post and Railways may be regulated by the scheme " Casual labourers(Grant of temporary status and regularization) scheme of Government of India 1990 " as stipulated by the H.E.T. O.M. No. 61016/2/90-Estt.(e) dated 10.9.93.

6. The circular referred to above stipulates that the casual labourers should have rendered continuous service of at least one year (vide para 4(i) of the scheme) and it is further clarified by expression " which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 day week" Nowhere it is mentioned that the service should be continuous without any break.

7. The Range Office observes 5 day week. From that plain reading of the circular, it appears that the casual labourers are required to have rendered 206 days of services in the last one year. In one year except Saturdays and Sundays total number of days are about 261 days taking into account 52 weeks a year. So the actual engagement of working days is possible to a maximum period of 261 days.

(3)

It would appear from para 4.1 of the Circular " which means that they have been engaged at least for a period of 240 days or 206 days as the case may be " that it is reasonable to infer that I should have been engaged 206 days and it can not be directly presumed from the circular that this engagement should be continuous without any break.

8. The above mentioned circulars is relevant in my case. The inner significance of the circular is that if a casual worker has been engaged for a period of 206 day in a year, he should be considered for grant of temporary status in terms of the above mentioned circular.

9. That I was engaged for more than 206 days in the year 1999, 2000, 2001, 2002, 2003 up till now and I am entitled to be considered for regularisation and grant of temporary status in the light of the above mentioned scheme.

10. That I served the department for long period and thereby I have become older and at this old age I am not in a position to seek job elsewhere. If I am not re-engaged and regularised in the service, the expectation of my family members who are solely dependent on me, shall be shattered and the livelihood of the family members will be in jeopardy.

In the circumstances stated above, I most fervently appeal to your kindself to consider my case and re-engaged me as casual worker for regularisation and save the life of my family members and for this act of kindness. I shall remain ever grateful to you.

Yours faithfully

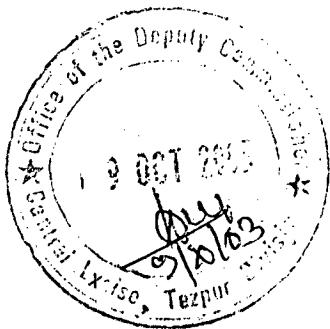
Sri Atul Kalita

(9/10/2003
(SRI ATUL KALITA))

Casual Worker

CENTRAL EXCISE : MANGALDAI

RANGE,



To
The Commissioner,
Central Excise, Shillong.
(Through Deputy Commissioner, Central Excise, Tezpur)

Subject:- Apply for Re-Engagement of Casual worker at
Central Excise, Tezpur Division.

Dated Tezpur 23-10-03.

Respected Sir,

Most respectfully, I beg to request you that, I have been engage in this Department as per Interview Basis on 12.1.99 at office of the Asstt. Commissioner Central Excise, Tezpur, vide your Establishment order No. II/(3)4/ET/ATE/173-79 dated 22-2-99 on the above subject.

That Sir, Suddenly, The Superintendent of Central Excise Mengaldoi Range as per verbal order engagement is suspened on 23-8-03.

That Sir, before engage of casual worker, I was working 3 (Three) years as a Canteen Manager, Central Excise Office Tezpur, Rubar Bagan, Certificate enclosed.

That Sir, I am also very poor family member beside my son and daughter are going to appear the H.S.L.C Examination on the year of 2003-04 and I am also earning member of my family.

That Sir, I request you that kindly to appoint me in any post under your Department at Asstt. Commissioner Office, Central Excise, Tezpur.

This is for favour of your kind consideratier is request and enclosed.

Enclosed:-

1. Application = 2 Nos.
2. Order copy = 2 ..
3. Canteen Manager Certificate = 1 No.

Yours Faithfully,

Sri Atul Kalita

(Sri Atul Kalita)
Vill:- Indira Nagar, Tezpur
P.O./P.S:- Tezpur.
Dist:- Sonitpur (Assam) 78401

Atul Kalita
2004
17.3.2004

केंद्रीय अधिकारिक अधिकारण
Central Administrative Tribunal

27 AUG 2004

ग 71/2004
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :::: GUWAHATI

File No. 9
27/8/04
S.C. 5. C.

O.A. NO. 70 OF 2004

Shri Atul Kalita

..... Applicant.
- Vs -

Union of India & Ors.

..... Respondents.

In the matter of :

Written Statement submitted by
the respondents.

The humble respondents beg to submit the parawise
written statement as follows :-

1. That with regard to the statement made in para 1, of the application the respondents beg to state that as per terms of engagement of casual workers, such engagement is purely temporary and for a fixed period of time. As such, claim of seniority over any other casual worker is not correct.
2. That with regard to the statement made in para 2, of the application the respondents beg to state that the applicant is not a Government employee and his service was not controlled by the rules meant for Govt. employees. He was a purely casual worker engaged to perform some works for a fixed period of time and was

paid wages on daily basis as recommended by the Department of Labour of the State Government. As such, the subject matter of the O.A. is beyond the jurisdiction of the Hon'ble Tribunal.

3. That with regard to the statement made in para 4.2, of the application the respondents beg to state that the applicant was engaged as a casual worker and not 'appointed' as claimed.

4. That with regard to the statement made in para 4.3, of the application, the respondents beg to state that there is no, and never was, office canteen in the Central Excise Divisional Office Tezpur. The staff strength of the Divisional office is not sufficient to run an office canteen as per existing norm. Notwithstanding the purported certificate of the then Divisional Assistant Commissioner, the applicant was not a Canteen Manager as claimed.

5. That with regard to the statement made in para 4.6, of the application the respondents beg to state that casual workers are engaged for a fixed period of time as mentioned in the engagement orders. As such, there can be no question of termination of service of a casual worker. In the instant case, the applicant was engaged for the period from 28.05.03 to 22.8.2003 and worked for the entire period. He was not engaged for any further period as his services was not considered necessary.

6. That with regard to the statement made in para 4.7, of the application the respondents beg to state that among casual workers, engaged for a specific period, there can be no seniority. Casual workers are engaged for a particular office to do a certain unskilled job for a particular period only. The other casual workers, whose names have been mentioned by the applicant were engaged for other offices. They did not 'join' the Department but were merely engaged by the Department. They ~~are~~ did not employees of the Department.

7. That with regard to the statement made in para 5.2, of the application the respondents beg to state that the engagement letter dated 22.2.99, the following conditions were laid down :-

1. That the engagement was on contract basis.
2. The duties were not of regular nature, but on "NO WORK NO PAY" basis.
3. Either of the parties could terminate the contract without assigning reason.
4. The contract did not lead to establishment of any relationship with the employer.

That the applicant served continuously for more than three years is a mis-statement. There were many breaks in his service.

8. That with regard to the statement made in para 5.3, of the application the respondents beg to state that the service of the applicant was not terminated. The fact is that he was not re-engaged.

-4-

9. That with regard to the statements made in para 5.4, of the application the respondents beg to state that the workers were engaged to do certain unskilled work for a particular period only on 'No Work No Pay Basis', For such workers no seniority list is maintained.

Verification.....

VERIFICATION

I, Arunath Hossain, ex-委員會委員
of Com. - 本院。本人 do hereby
verify that the statements made in paragraph 1 to 9
of the written statement are true to my knowledge, those
made in paragraphs being matter of records
are true to my information derived therefrom which I
believe to be true and those made in the rest are humble
submissions before the Hon'ble Tribunal. I have not
suppressed any material facts.

And I signed this verification on this the day
of 2004, at Guwahati.

Aslam Hussain
Deponent.