

30/100
2
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 78/2004.....

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

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

1. Orders Sheet O.A-78/04..... Pg..... 1 to.....
2. Judgment/Order dtd. 31/03/2004..... Pg..... 1 to..... 2 Disposed
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 78/2004..... Pg..... 1 to..... 33.....
5. E.P/M.P..... Pg..... to.....
6. R.A/C.P..... Pg..... to.....
7. W.S..... Pg..... to.....
8. Rejoinder..... Pg..... to.....
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Org.App/ Misc.Petn/Cont.Petn/ Rev.Appl. 78/2004

In O.A.

Name of the Applicant(S) Sri Meema K. Das

Name of the Respondent(S) CGO & O.S.

Advocate for the Applicant Mr D.C. Mahanta, R.C. Barpatarogohain,
B. Buragohain, M.S.B. Gohain & Miss B. Barua.

Counsel for the Railway/ C.G.S.C. C.G.S.C.

| OFFICE NOTE | DATE | ORDER OF THE TRIBUNAL |
|-----------------------------------|-----------|--|
| 11G 378837 25/3/04 | 31.3.2004 | Present: The Hon'ble Shri Kuldip Singh, Member (J). The Hon'ble Shri K. V. prahladan, Member (A). Heard counsel for the parties. order passed separately. |
| <i>Done By... 30/3/04</i> | | <i>K. V. prahladan Member (A)</i> <i>Member (J)</i> |

22.4.04
copy of the order
has been sent to the
Office for issuing the
same to the applicant
as well as to the C.G.S.C.
for the record.

HS

26/4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / RXA. No. 78 . . . of 2004.

DATE OF DECISION 31.3.2004.....

Shri Munna Kumar Das APPLICANT(S).

Mr.D.C.Mahanta, R.C.Barpatragohain, B.Buragohain, ADVOCATE FOR THE
S.B.Gohain & Ms.B.Baruah. APPLICANT(S).

- Versus -

- VERSUS -

THE HON'BLE SHRI KULDIP SINGH, JUDICIAL MEMBER.

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

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

Judgment delivered by Ho'ble Member (J).

4

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.78 of 2004.

Date of Order : This, the 31st Day of March, 2004.

THE HON'BLE SHRI KULDIP SINGH, JUDICIAL MEMBER.

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

Shri Munna Kumar Das
C/o Sri Prabhat Chandra Das
Water Resource Department
Chandmari, Guwahati - 781 003. Applicant.

By Advocate Mr.D.C.Mahanta, R.C.Barpatragohain,
B.Buragohain, S.B.Gohain & Ms.B.Baruah.

- Versus -

1. The Union of India
Represented by the Director, Publication Division
Ministry of Information & Broadcasting
Government of India, Patiala House
New Delhi - 110 001.

2. The Management of Editor cum Sr.Correspondent
Yojana (Assamese), Publication Division

3. The Editor
Payobhara Yojana (Assamese)
Guwahati - 1. Respondents.

By Mr.A.Deb Roy, SrC.G.S.C.

O R D E R (ORAL)

KULDIP SINGH, MEMBER (J) :

We have Meard Mr.D.C.Mahanta, learned counsel for the applicant and also Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents.

2. The applicant was engaged as casual labourer and was deployed as helper on daily wage basis for a Mobile Book Van. Since the Mobile Book Van is not in operation at present, the services of the applicant has been dispensed with. The impugn order dated 14.1.2004 itself speaks that whenever work becomes available, he will be reengaged.

Keeping in view the stand taken by the respondents at the admission stage itself the O.A. can be disposed of/with the direction upon the respondents that in case the work of the casual nature becomes available with the respondents, they shall reengage the applicant as mentioned in the impugned order dated

14.1.2004. Accordingly we disposed of the O.A. with a direction upon the respondents to reengage the applicant as and when the work of a casual nature becomes available.

K.V.Prahladan
(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER

Kuldeep Singh
(KULDIP SINGH)
JUDICIAL MEMBER

ROMANIC

AB

THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

GUWAHATI

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

C.A. No. 78 of 2004

Sri Munna Kr. Das

...Applicant

...Versus...

Union of India & Ors.

...Respondents...

I N D E X

| Sl. No. | Particulars | Page No. |
|---------|----------------------|----------|
| 1. | Original Application | 1 to 11 |
| 2. | Verification | 12 |
| 3. | Annexure - A | 13 to 18 |
| 4. | Annexure - B | 19 |
| 5. | Annexure - C | 20 to 22 |
| 6. | Annexure - D | 23 to 25 |
| 7. | Annexure - E | 26 |
| 8. | Annexure - F | 27 to 30 |
| 9. | Annexure - G | 31 & 32 |
| 10. | Annexure - H | 33 |

Date of filing

Filed by:

Smriti Borpaté Gohain
Advocate. 30.3.04

THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
AT GUWAHATI

D. A. NO. /2004

Shri Munna Kr. Das

...Applicant

-Versus-

Union of India & Others

...Respondents

LIST OF DATES AND SYNOPSIS OF THE CASE

DATE SYNOPSIS OF PARTICULARS IN THE APPLICATION

18.3.97 - The applicant was appointed on daily wage basis on 18.3.97 on daily basis in the office of the Yojana (Assamese) Unit, Publication Division, Ministry of Information and Broadcasting, Mawjan Road, Uzanbazar, Guwahati.

7.8.97 - The applicant was appointed on daily wage basis vide order No. VA/Estt/10/97/267 dtd. 7.8.97 in the office of the Editor cum Sr. Correspondent Yojana (Assamese).

31.8.99 - The applicant was served with a termination order vide letter No. A-12034/6/97 Admn II dtd. 25.8.99 w.e.f. 1.9.99 without prior notice.

25.7.2001 - The Hon'ble Tribunal was pleased to set aside the said termination order dtd. 31.8.99 vide the award dtd. 25.7.2001.

4

28.3.2001 - The Hon'ble Tribunal was pleased to pass an order dtd. 28.3.2001 for similarly situated person.

16.10.2001 - In the light of the said award dtd. 28.3.2001 the applicant submitted his joining report of resuming his duties on 16.10.2001.

9.12.2002 - The Deputy Director (Admn) Ministry of Information and Broadcasting, New Delhi in his report dtd. 9.12.2002 in paragraph 5 of the report, appreciated the applicant service for doing fine jobs including clerical jobs in the Yojana Office, Guwahati.

27.1.2003 - That the applicant wrote a letter dtd. 27.1.2003 to Section officer (Admn-II) Publication Division, Patiala House, New Delhi through the Editor for granting the applicant the pay scale of helper as per rules.

14.8.2003 - An appeal dtd. 14.8.2003 was submitted to the Director Publication Division, Ministry of Information and Broadcasting, New Delhi to the applicant for regularisation of service.

9

8.1.2004 - An application dtd. 8.1.2004 submitted by the applicant to the Editor, Payobhara, Yojana (Assamese).

14.1.2004 - A letter dtd. 14.1.2004 issued by the Assmt. Editor Yojana (Assamese) addressed to the applicant stating that as per the instruction of the Division, the applicant is not being engaged on daily wage basis as helper or driver as the van is not in operation.

THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
AT GUWAHATI

An application under Section 19 of
the Administrative Tribunal Act, 1983

D. A. NO. 78 /2004

Shri Munna Kumar Das

...Applicant

...Versus...

Union of India & Others

...Respondents

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE APPLICANT:

1. Shri Munna Kumar Das

C/o Sri Prabhat Chandra Das,

Water Resource Department,

Chandmari, Guwahati - 781003.

Applicant has been working in the office
the Yojana, Publication and Broadcasting,
Govt. of India, Ministry of Information and
Broadcasting, Maujan Road, Uzambazar,
Guwahati - 781001.

Contd. . P/...

Sri Munna Kumar Das
Filed by:
Munna Kumar Das
through Smruti
Boppatha Gohain
Advocate.

9/3/04

Shri Mumukshu Das

2. PARTICULARS OF THE RESPONDENTS:

1. The Union of India, represented by the Director, Publication Division, Ministry of Information & Broadcasting, Government of India, Patiala House, New Delhi-110001.
2. The Management of Editor cum Sr. Correspondent Yojana (Assamese), Publication Division.
3. The Editor, Payobhara Yojana (Assamese), Guwahati - 1.

3. PARTICULARS FOR AGAINST WHICH THE APPLICATION IS MADE:

- I. The award dtd. 25.7.2001 passed by the Industrial Tribunal, Guwahati, Assam.
- II. Joining report dtd. 16.10.2001.
- III. An order dtd. 29.3.2001 in Original application No. 333 of 2000(T) passed by Central Administrative Tribunal.
- IV. A report dtd. 9.12.2002 by the Deputy Director (Administration) to the Editor, Yojana, (Assamese), Guwahati.
- V. My letter dtd. 27.1.2003 in letter No. Va(Estt)/8/2003, 2P, Yojana (Assamese) Publication Division, Ministry of I & B, Uzambazar to Sri Rajesh Mapper S.O. (Admn-II).

Contd. P/-

VI. Letter dtd. 14th August, 2003 to the Director (Admn) Govt. of India, Ministry of Information and Board Casting, Patiala House, New Delhi-110001.

VII. An appeal for regularisation of service allowing to resume regular duties dtd. 8.1.04 to the Editor, Payobhara Yojana (Assamese) Guwahati.

VIII. A Letter No. VA/East/B/2004/511 dtd. Guwahati 14.1.2004 issued by the Asstt. Editor, Yojana (Assamese), Guwahati-1.

4. JURISDICTION OF THE TRIBUNAL:

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

5. LIMITATIONS:

The applicant further declares that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

6. BRIEF FACTS OF THE CASE:

i. That the applicant is a citizen of India and as such he is entitled to all the rights, protections and safeguards granted under the Constitution of India and the laws framed thereunder.

[4]

II. That the applicant states that the respondent authority had called for interview for the post of Driver (helper on daily wage basis(casual)) in the Yojana (Assamese) Unit, Publication Division, Guwahati vide letter No. YA/Estt/10/97/163 dt'd. 18.3.97. Thereafter the applicant was appointed on daily wage basis in the office of the Yojana (Assamese) Unit, Publication Division, Ministry of Information and Broadcasting, Maujan Road, Uzambazar, Guwahati, vide appointment order No.YA/Estt/10/97/267 and the applicant joined in duty on 7.8.97 in the office of the Editor cum Sr. Correspondent Yojana (Assamese).

III. That the applicant begs to state that he had been rendering sincere service to the fullest satisfaction of the authority concerned without any blemish whatsoever, but all on a sudden on 31.8.99 without any prior notice whatsoever the applicant was served with a termination order vide letter No. A-12034/697 Admin II dtd. 25.8.99 w.e.f. 1.9.99.

The applicant further states that he requested the concerned authority several times to reinstate him in service but the Management did not pay any attention to the request and as such dispute arose between the Management of Editor-cum correspondent, Yojana (Assamese) Publication, Uzambazar, Guwahati, and

Munna Waroroo

the applicant as workman and the matter was referred to the Industrial Tribunal, Guwahati, Assam by the appropriate Govt. concerned. The reference was registered as Ref. Case No. 7 (C) 2000.

IV. That the applicant begs to state that the Industrial Tribunal after admitting the matter issued notice to both the parties calling them to file written statements and after hearing both the parties and on perusal of records was pleased to pass an order declaring the termination order dtd. 31.8.99 to be illegal and therefore, the Hon'ble Tribunal was pleased to set aside the said termination order vide the award dtd. 25.7.2001.

A photocopy of the award dtd. 25.7.2001 is annexed herewith and marked as Annexure - A.

V. That the applicant begs to state that in the light of the said award dtd. 25.7.2001 the applicant submitted his joining report of resuming to his duties on 16.10.2001 passing in Ref. Case No. 7 (C) 2000 and since then he has been performing his duties very sincerely to the fullest satisfaction of all concerned.

A photocopy of the joining report dtd. 16.10.2001 is annexed herewith and marked as Annexure - B.

VI. That the applicant states that the applicant's case may also be considered in the light of the order which was passed on 28.3.2001 by the Hon'ble Central Administrative Tribunal, Guwahati Bench in the case of the similarly situated person Shri Upen Kalita Vs. Union of India vide Original Application No. 233 of 2000(T). Be it stated that the Central Administrative in the said case observed that the workman Shri Upen Kalita fulfilled the requirement of the policy of casual labourers (Grant of Temporary Status and Regularisation) Schemes of the Govt. of India, 1993 and therefore the Hon'ble Tribunal was pleased to pass an order by directing the authority concerned to regularise the service of the workman Shri Upen Kalita w.e.f. 1.1.1994. And as such the concerned authority absorbed the workman Shri Upen Kalita as peon on regular basis in Sept/2002 and posted him in DAUP, Chennai.

A photocopy of the order dtd. 28.3.2001 passed by the Central Administrative Tribunal Guwahati Bench is annexed herewith and marked as Annexure-C.

VII. That the applicant states that the Deputy Director (Admin) Ministry of Information and Broadcasting New Delhi, in his report dtd. 9.12.2002 in paragraph 5 of the report, appreciated the applicant service for

doing five jobs including clerical jobs in the Yojana Officer, Guwahati.

A photocopy of the report dtd. 9.12.02 is annexed herewith as Annexure - D.

VII. That the applicant states that the applicant wrote a letter dtd. 27.1.2003 to Shri Rajesh Makkar, Section Officer (Admin-II) Publication Division, Patiala House, New Delhi through the Editor Yojana (Assamese) stating that the applicant had been paid only at the prescribed rate of state Government Officer in Assam (i.e. 161.15 per day) and requested to look into the matter personally and to do the needful in granting the applicant the pay scale of helper as is admissible as per rules. But nothing has been improved in this regard from that end.

A photocopy of the letter dtd. 27.1.2003 is annexed herewith as Annexure - E.

IX. That the applicant states that the applicant submitted an appeal dtd. 14th August, 2003, to the Director, Publication Division, Ministry of Information and Broadcasting, New Delhi, through the Editor, Payobhara Yojana (Assamese), Guwahati for regularisation of applicant service w.e.f. 1.8.1997 with consequential financial benefits. But the concerned authority remained silent and the same was not considered till today.

Contd. P/-

Shri Munna Kr. Das

A photocopy of the application dtd. 14th August, 2003 is annexed herewith and marked as Annexure - F.

X. That the applicant states that the applicant again submitted an application on 8th January, 2004 to the Editor, Payobhara Yojana (Assamese), Guwahati with reference to appeal dtd. 14th August, 2003. Be it stated that this time also the concerned authority did not pay any attention to the applicant's appeal dtd. 8th January, 2004. On 10th December, 2003 the applicant was directed by the Editor Payobhara Yojana (Assamese) not go and attend his duties. The applicant requested the Editor to give the valid order in writing but denied to serve upon him. The applicant was also not allowed to put his signature on attendance register without any reason.

A photocopy of the letter dtd. 8.4.2004 is annexed herewith as Annexure - G.

XI. That the applicant states that on 14th January, 2004 the Asstt. Editor, Yojana (Assamese) issued a letter addressed to Shri Munna Kr. Das (Applicant) with reference to the applicant applications dtd. 14th August, 2003 and 8th January, 2004 stating that as per instruction of the Division, the applicant has not being

18
Sri Anna Kr. Dan.

engaged on daily wage basis as helper or driver as the van is not in operation at present and also informed that whenever work becomes available the applicant will be re-engaged. The applicant states that above order is arbitrary in nature.

A photo copy of the letter dtd. 14.1.04 is annexed herewith as Annexure - H.

7. RELIEF SOUGHT FOR:

In facts and circumstances the applicant prays for the following reliefs:

a) That in the light of the award dtd. 28.7.2001 have submitted his joining report on 16.10.2001 and since then he has performing his duties very sincerely to the fullest satisfaction of all concerned and as such his service should have been regularised in the office of the Editor, Payobhara Yojana (Assamese).

b) That in another case of termination of services of one Sri Upen Kalita a similarly situated peon with the applicant service was regularised in the light of the Hon'ble Central Administrative Tribunal, Guwahati Bench Judgment dtd. 28.3.2001 and he was absorbed as peon on regular basis and as such the applicant's service should have also been regularised in the light of the similar judgment dtd. 28.7.2001.

cl) That the applicant may be given to put his signature on the attendance register in the office of the Editor, Payobhara and consider for regularisation of his services.

cl) That the applicant may be given all service benefits like the similarly situated persons.

The above reliefs are sought for on the following amongst others:

GROUND

1. For that although the applicant submitted his joining report on 16.10.2001 in the light of this Hon'ble Industrial Tribunal Judgement dtd. 28.7.2001 but his services have not been regularised by the respondent authority.
2. For that the act of the respondents in attempting to deprive the applicant in not regularisation of his service and also depriving him from putting his signature in the attendance register.
3. For that service of some similarly situated person has been regularised in the light of the judgment dtd. 28.3.2001.
4. For that the applicant has already been rendering services for more than six years but he did not get any job security.

5. For that the services of the applicant can be regularised against the post he is working for last 6 years.

6. INTERIM RELIEF SOUGHT FOR:

The respondents may be directed to immediately allow the applicant to put his signature in the attendance register in the office of the Editor Payobhara.

7. DETAILS OF REMEDIES:

This Hon'ble Tribunal may be pleased to declare the act of the respondents in not regularisation of the applicant's services and/or pass any other or further order/orders and directions as to this Hon'ble Tribunal may deem fit and proper on the above facts and circumstances of the matter.

10. MATTERS FILED IN ANY OTHER COURT:

No application or petition have been filed before any other court.

11. The applicant prefer an appeal before the authority. However, no remedy have been found and the remedies sought for before this Tribunal would be the only an opportunity.

12. PARTICULARS OF THE POSTAL ORDERS:

1. List of documents - As per index

VERIFICATION

I, Shri Munna Kumar Das, aged about years,
 Son of Sri Prabhat Chandra Das, Water Resource Department,
 Chandmari, Guwahati-3 in the district of Karup,
 Assam do hereby verify that the statements made in
 paragraphs I, II, III, ~~IV~~,

are true to the best of my knowledge, those
 made in paragraphs IV, V, VI, VII, VIII, IX, X, XI
 are true to my information derived from records and the
 rests are my humble submissions before this Hon'ble
 Tribunal.

And I sign this verification on this
 day of March, 2004 at Guwahati.

Sri Munna Kumar Das.

Signature

Ramakura - A

In the Industrial Tribunal, Guwahati, Assam

Reference No. 7(c) of 2000

Presente Sri K. Sarma, LL.B.,

Presiding Officer,

Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute between

The Management of

Editor cum Sr. Correspondent Yojana (Assamese), Publication Division.

-4-

Their workman Sri Munna Kr. Das

Date of Award : 25.7.2001

AWARD

This Industrial Dispute has been referred to by the Govt. of India, Ministry of Labour under Section 10 of the Industrial Disputes Act, vide order No. LA2002/257/92/ID(DU) dt. 2.2.2000 to adjudicate the dispute arising between the Management of Editor cum Sr. Correspondent Yojana (Assamese) Publication and their Workman Sri Munna Kr. Das out of termination of his service as helper in the office of the Yojana of the Assam Unit, Publication Division, Ministry of I & B Nowjan Road, Dazanbazar, Guwahati. The referring authority has framed the following issue to decide the matter of controversy between the parties.

"Whether the motion of the Management of Yojana Assamese, Publication Division, Guwahati in

terminating the services of their workman Sri Munna Kr. Das on or, f. 1.9.97 is justified ? If not, to what relief the workman is entitled ?

On receipt of reference, this Tribunal has registered this case and issued notices to both the parties calling upon them to file their written statement, Addl written statement and documents if any and also to adduce oral evidence in support of their case, in response of which both the parties have appeared and filed their written statements, addl. written statements and documents and also adduced oral evidence.

After recording oral evidence the arguments advanced by the learned Advocates for both the parties are heard.

The workman case as appeared in the material on record is that workman Munna Das was appointed as helper in the office of Yojana (Assamese) Unit, Publication Division, Ministry of I & B Nowjan Road, Uzanbazar Guwahati vide appointment order No. YA/ESTT/10/97/267 dttd. 1897 which is ext. B in this case on daily wages basis at a Rs.45/- per day making payment at the end of the month. Before appointment the authority concerned has issued requisition to the local Employment Exchange in response to which employment authority has forwarded the name of present work along with some other candidates for selection of the post of driver/helper on the daily wages basis. On receipt of name of from Employment Exchange, the Management has held an interview calling

the candidates for interview vide Ext. A calling letter and thereafter having found him qualified the workman was appointed as helper on wage basis as stated above vide Ext. B appointment letter and the workman joined on 7.8.97 by submitting joining report Ext.C. it is to be stated that the workman in course of his duty as helper was engaged to work as Chowkidar vide order dtd. 31.3.99 which is Ext. D.

The workman after appointment has discharged his duty to best of his ability till 31.3.99. It is to be mentioned that the authority being satisfied with the performance of the workman has issued a certificate Ext.E on 20.7.99 appreciating his duty. But 31.3.99 the workman was suddenly terminated from the service by the Management vide order No.A-12034/6/97 dtd. 25.6.99 m.e.f. 1.9.99 without any prior notice and without assigning any reason thereof.

The workman, thereafter being at a loss what to do, then filed a representation before the concerned labour authority who has tried to settle the matter amicably by holding conciliation between the parties but having failed to settle the matter, the Labour authority has submitted failure report to the appropriate Govt. who has ultimately referred the matter to this Tribunal for adjudication with the above mentioned issues.

The management on the other hand by filing written statement has contended inter alia that the workman Munna

Das was engaged on wage basis in order to meet the exigency of work as per direction of the Superior authority as there was no regular vacancy against the post of driver/helper etc. As he was appointed as casual helper for the official mobile van for want of regular vacancy, the question of his regularisation does not arise. It is also contended that the workman was engaged as casual worker on daily wages basis for performing job of casual nature, it is implied that his engagement is temporary and shall be terminated at any moment without showing any reason. This being the nature of engagement the termination of workman from his service does not require any notice and accordingly he was released from the service.

I have heard the argument advance by the learned advocate for both the parties.

The learned advocate for the workman has submitted that the workman has completed 240 days of work in a year and hence he is entitled to regularisation. It is further contended that the termination of the workman after completion of 240 days of service without complying with the provision of law laid down section 26(F) of the I.D. Act is purely illegal and order of termination needs to be set aside. In support of office contention, the learned advocate for the workman has referred to case law AIR 1981 SC Page 1263.

The learned advocate for the management has contended that the engagement of the workman was casual

in nature and hence his termination did not require any notice nor compliance of provision of section 28(F) of the ID Act and order of termination quite legal and justified.

After hearing arguments of both the parties I have carefully gone through entire material on record including oral evidence by the workman. Management has not adduced any oral evidence but has submitted some documents along with the written statement. From the material on record everything is clear that engagement of workman on casual basis has not been denied by the Management. It is also established from the material on record that workman has completed 240 days of works in a year. It is also established from his evidence that the Mobile Van where workman was working is still functioning and have nature of work against which workman was engaged in perennial in nature. The Management has not shown any reason about dismissal of the workman. It is also settled principle of law that even daily rated workman who completed 240 days of work within a year cannot be terminated without complying with Section 10(F) of ID Act which requires service of one month notice with a salary of one month. In the instant case the Management has totally ignored the aforesaid provision of law which makes the order of termination illegal in the eye of law. On the workman has completed 240 days of work in a year and his work is perennial in nature, his termination without any justified reason and without

complying Section 20(F) of the ID Act can not be said to justify and cannot be allowed to stand in the eye of law.

In the result the order of termination is held to be illegal and it is accordingly set aside. This reference is accordingly awarded in favour of the workman. The Management is directed to reengage the workman in the capacity from which he was disengaged within a month from the date of this award. Prepare an award accordingly.

sd/- illegible

Presiding Officer

Industrial Tribunal, Guwahati

25.7.2004

19

24

To
The Editor-Cum-Sr. Correspondent,
Yojana (Assamese), Publications Division,
Ujanbazar, Guwahati-1.

Ref: Joining in Service as per Award Dtd. 25-07-01 in
connection with ref Case No. 7 (C) 2000

Sir,

With due respect I beg to inform you that I have joining
in my duty today forenoon under your establishment as per
Award passed by the Learned Industrial Tribunal, Guwahati in
reference Case No. 7 (C) 2000 dt. 25-07-01.

Yours faithfully,

Sri Munna Kr. Das

(Munna Kr. Das)
16-10-2001.

Verfied To Be True Copy
S. P. Das
ADVOCATE
MUNNA KR. DAS

Original Application No. 223 of 2000(T)

Date of Order: This the 28th Day of March 2001.

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

Sri Upen Kalita
Son of Late Lataru Kalita
Gandhi Basti, Guwahati-781003.

By Advocate Mrs.Uma Chakraborty.

-vs-

1. The Union of India .

2. The Director (Admn)
Government of India,
Ministry of Information & Boardcasting,
Patiala House, New Delhi-1

3. The Deputy Director(Admn)
Government of India,
Ministry of Information & Broadcasing, Patiala House,
New Delhi-110001.

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

O R D E R.

CHUDHURY (J) : V.C.:

The case has a chequered career. By order dated 5.11.86 the applicant was engaged as Casual Packer on daily wage basis for a period of 15 days in a month and his appointment was extended from time to time. In this fashion the applicant worked under the respondents. He sought for regular appointment against the post of Peon and Paker. He reiterated his prayer for regular appointment. His name was included in the list prepared by the department. By letter dated 9th July 1990 the respondents authority assured the applicant that his request would be given due consideration at the appropriate time. By order dated 11th July, 1990 the petitioner was informed that since the office had not received sanction for post of daily wage

contd/-

Permitted To Be True Copy
U.P. Chakraborty
ADVOCATE
221 - 100003 GROUP

paker from the competent authority, the applicant was not required to attend office until further orders. The applicant moved the Hon'ble High Court by Writ Petition which was numbered as Civil No.1845/90. Considering the respective cases of the parties the High Court finally disposed the matter on 11.2.1992 with the following observations :-

9. "On careful consideration of the submissions on behalf of the parties, we are inclined to think that the petitioner who has been working since 1986 and whose discontinuation from service as said before we have held to be unjustified, should be considered for regularisation against a post in case it is available and the petitioner is eligible and qualified for the same."

*10. For the aforesaid reasons, we dispose of this petition with the direction that the petitioner shall be reinstated in the post of Paker on daily wage basis which he was holding prior to the order dated 11th July, 1990, within a period of two weeks from to-day. The petitioner shall, however, be entitled to wages from the date he is reinstated. The respondents authorities shall duly consider the petitioner's case for regularisation in accordance with rules subject to eligibility for the post."

The applicant was reinstated but he was not regularised. He moved a Contempt Petition was numbered as Civil Original Contempt No.117 of 94. The High Court declined to provide with the Contempt Proceedings, but made the following observations:-

"But before I part with the record I hope and and trust that the authority shall do the needful to help the poor person like the petitioner so that he may have a decent living. After all the state has the duty to treat its employee in a decent manner so that the employees may not have the grievance that they have not been treated properly. For smooth management and prosperity of the society it is always necessary that there should be a harmonious relationship between the employer and the employee. The employee should not have the grievance that he has not been considered by following due process of law.

contd/-

Encl'd to "117/1994/C.P."
S. Balakar
ADVOCATE
SAILAKAR & CO. (P.L.L.C.)

In that view of the matter, I hope that the authority shall consider the case of the petitioner for regularisation as against the vacancy which may arise in future. The authority have the power to regularise the employee after relaxing eligibility criteria in appropriate case. Even that power may be exercised by the authority since the petitioner is working from 1986."

The applicant stated that he was reinstated on 11.2.92 and completed 206 days in each year as he used to work from 15 to 18 days in every month even though on records he was supposed to have worked for 15 days only. The respondents did not show those extra days of his excess working in his attendance register in the first two years of his service i.e. 1992 and 1993. But those days were shown thereafter from the year 1994 onwards. Be that as it may on the own showing of the respondents that the applicant rendered his services 206 days in each of the year in the office of the respondents, as it be reflected from the order dated 9.9.98. The policy (Casual Labourers) (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993, "since the applicant fulfilled the requirement of the scheme. There is no justification for denying the benefits of the applicant from the scheme with effect from 1.1.94. On considering all the aspects of the matter the respondents are ordered to take up the matter of the applicant for granting of temporary status as per the scheme with effect from 1.1.94 and thereafter consider the case of the applicant for regularisation if post is available in Group 'D', and The respondents shall take necessary steps for granting temporary status from 1.1.94 as expeditiously as possible within 2 months from the date of receipt of this order.

Application is disposed to the extent indicated. There shall however, be no order as to costs.

Sd/ VICE CHAIRMAN

Verified To Be True (C.P.)
8/8/91
ADVOCATE
SALMAN MIRZA GROUP

Administrative Problems of Yojana (Assamese)

A&G SECTION

During our visit to Yojana (Assamese) Guwahati, the under-mentioned administrative problems were pointed out. JD(Admn)/DDA(H) may kindly take necessary action.

1. Grievances pertaining to Special Duty Allowance (SDA):

It was noticed that SDA and other allowances were being given to certain persons only. For example Shri M.C.Das, CG-II who has all India transferability and has worked outside North East is not getting SDA. Also recently Cash Section started giving SDA to other Staff members of Yojana Guwahati after a long gap. Arrears were not paid. JD(Admn) may kindly look into and ensure payment of SDA to all entitled persons. Shri H.K.Hazarika, Stenographer (Assamese), started getting SDA again just after DPP wrote "please discuss" on his representation and Cash Section started giving SDA to Shri Hazarika and Shri P.Chakravarti, Asst. Editor, from June 2002 after a discussion between Admn.I and Cash without any clear-cut decision/orders. Necessary papers are enclosed. relevant portions have been highlighted. The case of Shri M.C.Das, CG-II has been ignored.

It may be noted that earlier orders were issued recovering SDA paid to the above persons. Clear-cut decision/orders is/are required on SDA and other allowances to avoid discrimination/grievances and for payment of arrears concerning recovered SDA.

2. Problem of non-payment of House Rent Allowance (HRA):

Shri R.M. Devanji Sales Assistant, Yojana(Assamese), is not being paid HRA. There is a provision for payment of Double HRA in NE. Shri Devanji is retaining a Government accommodation in Kolkata, but he is not being given single HRA for staying in Guwahati. He has a grievance that officers in other departments are being paid HRA, though they are also retaining Government accommodation in their last places of postings. JD(Admn) may kindly see. In fact the instructions nowhere says single HRA should not be given for staying in North East. A positive interpretation of the instructions is required. A copy of Shri Devanji's application in this regard is enclosed.

3. Request of transfer of Shri Devanji, Sales Assistant:

Shri Devanji was transferred from Kolkata to Guwahati for one year almost at the fag end of his retirement. He is having a lot of personal problems. He was transferred along with the post. There is little point in continuing an unwilling person in Guwahati. This is seriously affecting the sales also. It was suggested that either Sales Assistants may be posted in North East on rotational basis or a post created in Guwahati so that a local person is selected. SE,Kolkata, is also suffering with the transfer of Shri Devanji. The other Sales Assistant in Kolkata is going to retire shortly.

It is understood that transfer of the post of Sales Assistant from Kolkata to Guwahati was approved for only one year. Copies of representation from Shri Devanji are enclosed.

JD(Admn)/JD(VR) may kindly see for necessary action.

1029

4. Provision of STD Connection:

The office of Yojana is facing a lot of problems without STD facility. The office is having a fax machine without STD facility. Definitely there is a communication problem. It is very difficult to get trunk call in North East, especially in Guwahati. DDA(H) may kindly consider providing STD facility to Yojana (Assamese) at Guwahati. This is a major grievance of Editor, Yojana (Assamese).

JD (Admn)/DDA(H) may kindly see for necessary action.

5. Delay in filing of reply in the High Court of Guwahati in respect Shri Munna Kumar Das, Daily Wager:

Yojana Guwahati is not able to file a reply in the High Court of Guwahati as the concerned Central Government Counsel wants some advance payments. Communication in this regard has been going on with Hqrs (Admn-II Section). It was suggested that the Hqrs. can take up with the Ministry of Law pointing out the problems being faced. It is understood that the Industrial Tribunal had ordered continuance of the services of Shri M.K. Das.

Otherwise, Shri M.K. Das is doing a very fine job, including clerical jobs. He is a very hard-working person in the Yojana office.

6. Delay in payment to Daily Wager and Contract Driver:

There is always delay in the payment of wages to Daily Wager Shri Munna Kumar Das, and Contract Driver. Publication Division's wages are the only source of income to Shri M.K. Das, DW. The payment is delayed from 3 to 5 months. This is a problem of bread and butter for the Daily wager/Contract Driver. Daily Wage payment delay is a usual problem.

JD(Admn)/DDA(H) may kindly personally look into for a solution to such problems. These problems are being faced by other Units also.

7. Non-availability of allocation of work in the Sections in Hqrs:

Yojana Guwahati was in the dark as regards allocation of works in the Hqrs. Most of the communications were being sent to Dy. Director (Admn) In this Hqrs, there are three Dy. Directors. Most of the time there was no knowing whether a communication was being sent to the right Dy. Director. For Admn.II there is no Dy. Director and the Yojana office was not aware of JD(Admn.) Coordination Section should circulate details of allocation of work at the earliest. On our part we explained the details of allocation among the Administrative Division/Editorial section/DDAs/JD (Admn).

JD(Admn) may kindly see for necessary action.

Verfified To Be True Copy
8/8/91
ADVOCATE
RAJESH GUPTA

8. Circulation of Telephone list:

Telephone list was not being circulated among field offices. Yojana Guwahati never got a telephone list. Cash Section may kindly ensure that latest and up to date telephone list is sent to all offices, including Yojana Guwahati.

DDA(H) may please see for necessary action.

S. Sankar
(S. SANKAR)
DY. DIRECTOR(ADMN)
9/12/2002

JD(VR)- for item No.3

JD(Admn)

DDA(H)

Copy to JD(MDP)

Copy to Accounts Officer.

Copy to Shri H.K.Das, Editor, Yojana (Assamese), Guwahati.

SPB

Govt. of India,
 Yojana, Publications Division,
 Ministry of Information and Broadcasting,
 Naujan Road, Ujanbazar, Guwahati - 781001.

No.YA/Esatt/8/2003/24
 To

Dated: 27-01-2003.

Shri Rajesh Mokkar,
 Section Officer (Admn. II)
 Publications Division,
 Patiala House, New Delhi-110001.

Sir,

This unit office has prepared the Daily Wages bill in respect of Shri Munna Kr. Das, helper for the month from August to December, 2002 at the rate of 1/3 of the minimum pay scale of regular grade IV staff plus D.A. (Photocopy of the concerned rules is enclosed for ready reference). But he has been paid the prescribed rate of State Government office's in Assam (i.e. 61.15 per day).

Please look into the matter personally and confirmed us which wage rates is entitled by Shri Das at the earliest.

Yours faithfully,

(H. K. Das)
 Editor-Cum-Sr. Correspondent,
 Yojana (Assamese), Guwahati-1.

Enclt: As stated above.

Verified To Be True Copy
 8/2/2003
 ADVOCATE
 S. K. DAS

To,

The Director (Admn.)
Government of India
Ministry of Information & Broadcasting
Patiala House.
New-Delhi-11001.

Dated 14. th August, 2003.

(Through the Editor, PAYOBHARA
Yojana-(Assamese), Guwahati.

Sub : An application for regularisation of service with effect from 1.8.97 with consequential financial benefits.

Ref : 1. My joining report dtd 16.10.2001,
2. Award in reference No.7(C)of 2000 dtd.27.1.2003
passed by the Presiding Officer Industrial Tribunal,
Guwahati.
3. An order dtd.28.3.2001 in Original application
No.333 of 2000(T).Passed by Central Administrative
Tribunal.
4. A report dtd.9.12.2002 by Deputy Director(Adminis-
tration) to Editor, Yojana(Assamese) Guwahati .
5. My letter dtd. 27.1.2003 in letter No.Ya(Estt/8/
2003,24, Yojana (Assamese) Publication Division
Ministry of I &B Uzanbazar to Shri Rajesh Mappar
S.O (Admn-II).

Sir,

With reference to the above, I would like to lay before you the following few points for your information and sympathetic consideration:

1. That I was appointed as Helper in the Office of the Yozana (Assamese) unit, Publication Division, Ministry of Information and Broad-casting, Nawjan Road, Uzanbazar, Guwahati vide appointment order No.YA/ESTT/10/97/267, dtd.1.8.97 issued by the Editor Yozana (Assamese) on daily wage basis.

A copy of the appointment order dtd.
1.8.97 is annexed herewith and marked
as Annexure-I.

2. That I have been rendering very sincere service in this Office without any blemish and to the satisfaction of the management. But suddenly on 31.8.99 to my utter surprise and without any prior notice what soever, I was served with a termination order stating inter-alia that in pursuance of the H.Os letter No.A-12034/6/97 Admn.-II dtd. 25.8.99 and the

/ 2 /

termination was effective from 1.9.99.

A copy of the termination order dtd. 25.8.99 is annexed herewith and marked as Annexure-II.

2. That after requesting the concerned authority several times to re-instate me in service, the management did not pay any attention to my request and as such a dispute arose between the management of Editor-Cum-correspondents Yojana (Assamese) publication and me as a workman, pertaining out of termination of service as helper in the Office of the Yojana of Assam Unit, Publication Division, Ministry of I & B, Uzanbar, Guwahati, and the matter was referred to the Industrial Tribunal, Guwahati, Assam by the appropriate Government concerned. The reference was registered as Ref. Case No. 7(C)2000.

3. That the Industrial Tribunal after admitting the matter issued notices to both the parties calling them to file written statements and after hearing both the parties and on perusal of records including the written statements filed by the parties passed an award in favour of me declaring inter alia the termination order dtd. 25.8.99 to be illegal and therefore, the Hon'ble Tribunal was pleased to set aside the said termination order vide the award dtd. 23.7.2001.

A photo copy of the award dtd. 23.7.2001 is annexed herewith and marked as Annexure-III.

4. That I have submitted my joining report of resuming to my duties to my duties on 16.10.2001 in the light of the above award dtd. 23.7.2001 passed in Ref. Case No. 7(C)2000. since then I have been performing my duties very sincerely to the fullest satisfaction of the authorities concerned.

It is pertinent to mention that in his report dtd. 9.12.2002 the Deputy Director (Admn.) Ministry of Information & Broadcasting New-Delhi, in paragraph-5 appreciated my service for doing fine jobs including clerical jobs in the Yojana Office, Guwahati.

1. Certified To Be True Copy
2. S. B. Gohain
3. ADVOCATE
4. SANJAY KUMAR GUPTA

Contd.....3

A photocopy of the report dtd.

9.12.2002 is annexed herewith an
marked as Annexure-IV .

5. That, the Hon'ble Central Administrative Tribunal, Guwahati observed in the case of Shri Upen Kalita -vs Union of India that the workman Shri Upen Kalita who was a casual worker in the Yojana (Assamese) on daily wage basis sought for regularisation of his services. Instead of regularisation of the services of the workman his services was terminated by order dtd. 11th July, 1990 Later on the workman was reinstated but his services was not regularised. The workman approached the Hon'ble Central Administrative Tribunal, after hearing both the parties observed that the workman Shri Upen Kalita fulfilled the requirement of the policy Casual Labourers (Grant of Temporary staties and Regularisation) Scheme of the Govt. of India, 1993 and therefore the Hon'ble Tribunal was pleased to pass an order dtd. 28.3.2001 on the basis of the Policy 1993 in original application No. 233 of 2000(T) directing the authority concerned to regularise the service of the workman Shri Upen Kalita with effect from 1.1.1994. The concerned authority absorbed the workman Shri Upen Kalita as Peon on regular basis in Sept/2002 and posted him in DAVP, Chennai.

A Photocopy of the order dtd. 28.3.2001 is annexed herewith and marked as Annexure-V.

6. That I wrote a letter dtd. 27.1.2003 to Shri Rajish Mappar S.O (Admn.-II) through the Editor Yojana (Assamese) stating that I have been paid only at the prescribed rate of state Government Offices of Assam (I.C 61.18 per day) and a request was also made to look into the matter personally and to do the needful in granting me the pay Scale of helper as is admissible as per rules. But till to-day nothing has been done from that end.

A Photocopy of the letter dtd. 27.1.2003 is annexed herewith and marked as Annexure-VI.

Contd....4

ABH
ADVOCATE
S.A. - 11 MARCH 2004

7. That, I have been working very sincerely to the fullest satisfaction of the management of Yojana (Assamese) but my service has not yet been regularised for which I could not avail the actual pay scale against the post of helper including the consequential financial benefits.

7. That the services of Mr Upen Kalita who is a similarly situated person to me, has already been regularised as Peon w.e.f. 1.1.1994 and posted in DAVP, Chennal, in the light of the direction in order dtd. 28.3.2001 passed in Original application No. 233 of 2000(T). The principles of equality demands that my case should also be considered in the same line.

Further, as the termination order dtd. 25.8.99 has been set-aside by the Hon'ble Industrial Tribunal, Guwahati vide Order dtd. 23.7.2001 in Reference No. 7(C)2000, I should be considered to be in service with continuity since 1.8.97.

It is, therefore, prayed that your honour may graciously be pleased to pay due heed to my matter and applying a judicious mind your honour, may further be pleased to consider my case for regularisation of service as helper w.e.f. 1.8.97 i.e. the date of initial joining and granting all the consequential and incidental financial benefits for which I shall ever pray.

With kind regards.

Yours faithfully,

(MUNNA KR. DAS),

Verdict To Be True Copy
809.
SAI ADVOCATE
ADVOCATE GROUP

To

The Editor,
Payobhara Yojana (Assamese),
Guwahati.

Dated Guwahati, the 8th Jan. /2004.

Sub.: An appeal for regularisation of Service allowing to resume regular duties.

Ref.: My appeal dtd., 14th August 2003.

Sir,

With reference to the above I have the honour to inform you that I was appointed as helper in this Office and I continued my service with effect from 1-8-1997 on daily wage basis. But suddenly on 31-8-1999 without any prior notice to me I was served with a termination order. Terminating my services from 1-9-1999. Being dissatisfied and after failing to get any justice I approached the appropriate government and industrial dispute has been raised which was referred for adjudication before the Industrial Tribunal, Guwahati. The Industrial Tribunal after hearing both the parties was pleased to set aside the impugned termination order vide the award dtd. 28.7.2001. In the light of that award I have submitted my joining report on 16-10-2001 and since then I have been performing my duties very sincerely to the full satisfaction of all concerned.

In another case of termination of services of one Sri Upen Kalita, a similarly situated person with me, the Hon'ble Central Administrative Guwahati Bench vide judgement and order dtd., 28-3-2001 directed the concern authority to regularise the services of Shri Kalita and accordingly he was absorbed as Peon on regular basis.

I have been approaching the respective authorities verbally and in writing time and again to consider my case for regularisation in the light of the similarly situated person Shri Upen Kalita. But failing to get any justice I have submitted an appeal to the Director, Publication Division, Ministry of Information and Broadcasting, Government of India, Patiala House, New Delhi-1, through your good office on 14th August 2003. But till to day my case has not been considered.

certified To Be True COPY
S. B.
ADVOCATE
S. B.
S. B.

Contd....2/-

- 2 -

On the otherhand, vide verbal order, on 10th Dec. '03 you have directed me not to go and attend my duties. I requested you to kindly give me the order in writing which you have been declining to serve upon me. I am not allowed to put my signature on Attendance Register, without arrising any reason what so ever. This action is absolutely arbitrary amounting to breach of obligation fixed by the constitution and law of the land besides being violative of the principles of natural justice.

It is therefore, prayed that you honour would be pleased to kindly consider my case with a judicious mind paying due heed to the facts and circumstances of my bonafide claim and further be pleased to allow me to resume my duties and putting my signature in the Attendance Register regularly and also to consider my case for regularisation with effect from 1-8-1997 in the light of the above mentioned case of a similarly situated person, with all consequential benefits, for which act of kindness, I shall ever pray.

With kind regards

Yours faithfully,

Shri Munna Kumar Das

(Shri Munna Kumar Das),

Copy forwarded to:-

1. The Director, Publication Division, Ministry of Information and Broadcasting for favour of Information and kind necessary action alongwith an earnest request to consider my appeal dtd: 14th August '03, filed through proper Channel.
2. Shri Rayish Makkar, S.O. (Admn.-II), for favour of information and necessary action.

Shri Munna Kumar Das

(Shri Munna Kumar Das).

certified to be true copy
for Sh. das
ADVOCATE
-A- 11/11/2003

Govt. of India,
Yojana, Publications Division,
Ministry of Information and Broadcasting,
Naujan Road, Ujanbazar, Guwahati-781001.

No.YA/Esstt./8/2004/511

Dated Guwahati, the 14th January, 2004.

Sub: Representation for regularisation of services in respect of Shri Munna Kr. Das.

With reference to his representation dated 14th August, 2003 and subsequent letter on the subject dated 8-1-2004 received on 13th January, 2004, regarding regularisation of his services in the Department, Shri Munna Kr. Das is informed that as per instructions of the Division, his engagement as helper on daily wage basis is for Mobile Book Van and since the van is not in operation at present, the Driver and the Helper are not being engaged on daily wage basis. Whenever work becomes available, he will be reengaged.

(P. Chakravorty)

Asstt. Editor,

Yojana(Assamese), Guwahati-1.

To

Shri Munna Kr. Das,
C/O. Shri Prabhat Ch. Bania,
Water Resources Department,
Chandmari, Guwahati-781003.

SLB
ADVOCATE
PRACTICAL ATTORNEY