

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 204/2005

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 204/05

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s): Anup Kumar Misra

Respondent(s): 6. O. I. Q. OM

Advocate for the Applicant(s): - M. Chanda, S. Naith, S. Das Choudhury

Advocate for the Respondent(s): - C. A. H.

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed/C. F. for Rs. 50/- deposited vide A.P. /BD No. 204/156483	3.8.2005	Heard Mr. M. Chanda, learned counsel for the applicant and also Mr. M.U. Ahmed, learned Addl. C.G.S.C. C. for the respondents.
Dated 29.7.05		Issue notice to the respondents to show cause as to why the applica- tion shall not be admitted.
<i>Par</i> Glen Dy. Registrar		Post on 2.9.2005.
Steps not taken		<i>Par</i> Member
<i>Par</i>	2.9.05	Mr. M. Chanda learned counsel for the applicant is present. Mr. M.U. Ahmed learned Addl. C.G.S.C. seeks time. Post the matter on 1.11.05.
<i>Par</i> L. C. C. order dated 3.8.05. NB 4/8/05		<i>Par</i> Vice-Chairman
Steps taken on 21/8/05.		<i>Par</i> Vice-Chairman

Notice & order
Sent to D/section 602
issuing to resp. Nos.
1, 3, 4 & 5 by regd. post and
resp. No-2 received by
Hand. (12/8/05. D/No. 1253 to
1257
DT 16/8/05.

Notice duly
Served on
resp. No. 2.

22/8/05

Notice duly served
on resp. Nos. 1, 3, 4, 5.

23/8

1-9-05

Notice duly served

on R. Nos. 1, 3 & 4. R.m.

2 & 5 awaited

no wks filed

by

No. wks has been

billed

BB

16-12-05

No. written statement
has been filed.

30

Tb.12

31-1-06

No. wks has been
billed.

BB

3-3-06

No. wks has been
billed.

BB

8.11.2005

Heard Mr. S. Nath, learned
counsel for the applicant and Mr.
M.U. Ahmed, learned Addl. C.G.S.
C. for the respondents.

The application is admitted.
The respondents are directed to
file written statement. Post on
19.12.2005.

Q. No. 1
Vice-Chairman

19.12.2005

Mr. M. Chanda, learned
counsel for the applicant is
present. Mr. M.U. Ahmed, learned
Addl. C.G.S.C. for the respondent
seeks for time for filing written
statement. Post on 1.2.2006.

Q. No. 2
Vice-Chairman

BB

1.2.2006

Mr. M.U. Ahmed, learned Addl.C.G.
S.C. submits that he would like to
have some more time to file written
statement. Let it be done. post on
6.3.2006.

Q. No. 3
Vice-Chairman

6.3.2006

Mr. M.U. Ahmed, learned Addl.C.G.S.C.
submits that reply statement is ready
and is being filed today. Rejoinder,
if any, will be filed within three
weeks. Post on 29.3.2006.

Q. No. 4
Vice-Chairman

BB

O.A 204/05

Notes of the Registry	Date	Order of the Tribunal
<u>23.3.06</u> WPS filed by the Respondent Nos. 1 to 5	29.3.2003	Written statement has been filed by the respondents. Post on 27.4.2006. Rejoinder, if any, in the meantime.
<u>28 - 3 - 06</u> No Rejoinder has been filed.	27.4.06	Post the matter on 15.5.2006. Counsel for the applicant is at liberty to file rejoinder, if any in the meantime.
<u>No Rejoinder has been filed.</u> <u>26.4.06</u>	15.05.2006	Learned counsel for the applicant wanted to file rejoinder. Let it be done. Post on 07.06.2006.
<u>12 - 5 - 06</u> No Rejoinder has been filed.	7.6.2006	Mr. S. Nath, learned counsel for the applicant prays for time to file rejoinder Let it be done. Post on 28.6.2006.
<u>6 - 6 - 06</u> No Rejoinder has been filed.	28.06.2006	Post on 18.07.2006. In the meantime, counsel for the applicant is at liberty to file rejoinder. It is made clear that no time will be granted for filing rejoinder, because the applicant has got many chances for filing rejoinder.
<u>27 - 6 - 06</u> No Rejoinder has been filed.	17.7.06	Vice-Chairman
<u>No Rejoinder has been filed.</u>	mb	

204/05

18.07.2006

Learned counsel for the applicant submitted that rejoinder has been filed. Let it be brought on record if it is otherwise in order. Learned counsel for the respondents wanted time to take instruction on the rejoinder.

Post on 04.08.2006.

19.7.06

Rejoinder submitted
to the Applicant.

Vice-Chairman

mb

DR.

04.08.2006 Present: Hon'ble Sri K.V.Sachidanandan,
Vice-Chairman.

Hon'ble Sri Gautam Ray,
Administrative Member.

The case is ready
for hearing.

3-8-06

It is submitted that rejoinder has already been filed. The case is ready for hearing. Let the case be posted on 06.09.2006.

Member

Vice-Chairman

mb

The case is ready
for hearing.

14.3.07

1.3.07

Counsel for the applicant submitted that he is not ready. Respondents are directed to produce the records pertaining to selection.

Post before next Division Bench.

CL

Member

Vice-Chairman

23-4-07

pg

15.3.07

Counsel for the respondents prays

for time to fix produce documents.
Post the matter before the next available Division Bench.

23-4-07

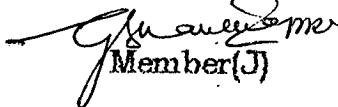
Member

Vice-Chairman

lm

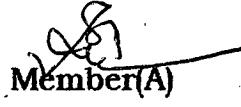
24.4.07. Counsel for the respondents has sought time to get Original records ~~by~~ tomorrow. Post the matter tomorrow on 25.4.07.


Member(A)


Member(J)

lm

25.4.07 On the prayer of the counsel for the parties call the matter on 27.4.07.


Member(A)


Member(J)

pg

27.4.07.

Heard Mr. M. Chanda learned counsel for the applicant and Mr. M. U. Ahmed learned addl. CLG & S. Cth for the respondents. Hearing concluded. Judgment reserved.

Member(A)

Member(J)

1m

18.6.07.

Judgment delivered in open Court. Kept in separate sheets. Application is dismissed ~~ex.~~ No Costs.


Vice-Chairman

lm

21.6.07
Copy of the
judg^t has been
sent to the office
for issuing the
same to the applicant
as well as to the
L/Adv. for the
respon^ts.
sd

X

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

Original Application No. 204 OF 2005

DATED THIS THE 18TH DAY OF JUNE, 2007.

CORAM :

**HON'BLE MR G SHANTHAPPA, MEMBER(J)
HON'BLE MR GAUTAM RAY, MEMBER(A)**

Shri Anup Misra,
S/o Shri Apurba Kumar Misra,
Misra Bhawan,
P.O. & Vill-Lalpani,
(via Manipur Bagan),
Dist-Hailakandi,
Assam-788 165.

: **Applicant**

(By Advocate Mr. M Chanda)

Versus

1. The Union of India,
Represented by Secretary to their
Government of India,
Ministry of Communications,
Department of Posts,
New Delhi-110 001.
2. The Chief Post Master General,
Assam Circle, Guwahati,
Meghdoot Bhawan,
Guwahati-768 001.
3. The Senior Superintendent of Post Offices,
Cachar Division,
Silchar Assam -788 001.
4. The Sub Divisional Inspector of
Post Offices, Hailakandi Division,
Hailakandi-788 151.
5. Shri Saumitra Nath,
C/o Shri Samar Nath,
P.O. & Vill-Lalpani,
Dist-Hailakandi,
Assam-788 165. : **Respondents**

(By Advocate Mr M.U.Ahmed, ACGSC)

ORDER

HON'BLE Mr. GUATAM RAY, MEMBER (A)

This Original Application under Section 19 of the Administrative Tribunals Act 1985 has been filed against the illegal appointment of the 5th respondent to the post of GDS Branch Postmaster of Lalpani Branch Post Office in Hailakandi District of Assam, depriving the applicant of his appointment to the said post although the applicant is legitimately entitled to get the post of the aforesaid post due to retirement of his father from the said post for which the applicant is eligible for appointment.

2. Briefly stated, the case of the applicant is as follows:

(a) The father of the applicant retired from service on 1-3-2002 after serving as Branch Post Master (BPM) of Lalpani Branch Post Office for 25 years. On 20-4-2002 the applicant and his father submitted separate representations praying for appointment of the applicant to the post of GDS BPM of Lalpani BPO, which was vacated by the father of applicant on retirement, on the ground that the applicant had the requisite qualifications and experience of working in the said post earlier on temporary basis during leave period of his father and since the said BPO was functioning in their house from 1973 on rent-free basis. [Copies of the said representations are enclosed as Annexure III-series to this O.A.]

(b) It is stated by the applicant that post of GDS BPM Lalpani Branch Post Office was advertised vide No.A-416 dated 31-1-2003. In the said advertisement it was mentioned that the applications were invited for the post from the OBC candidates only. The applicant, in response to the advertisement, once again submitted his application.



(c) The applicant further states that the said post of GDS BPM, Lalpani was re-advertised vide Re-notification dated 16-6-2003 due to non-receipt of sufficient applications in response to the earlier advertisement of 31-1-2003. In the re-advertisement the said vacancy was made open for the OBC/any community. In para 3 of the said re-advertisement it was further laid down that in case the minimum number of three eligible candidates belonging to OBC do not offer their candidature, the candidates belonging to other community (OC) will be considered (in order of preference indicated therein). [A copy of the re-notification dated 16-6-2003 is enclosed as Annexure-IV to this O.A.]

(d) The applicant states that he applied in prescribed format furnishing therewith all the relevant documents in response to the said re-advertisement dated 16-6-2003. The applicant states that this time also the requisite number of applications from eligible OBC candidates as stipulated under para 3 of the advertisement were not received. As such, 3 (three) candidates were called for interview vide letter dated 18-10-2004 which included 2 (two) general category candidates including the applicant. The applicant appeared for interview on 27-10-2004 as directed. [A copy of the call letter dated 18-10-2004 is enclosed as Annexure 'V' to the O.A]

(e) The applicant further states that one Shri Saumitra Nath, respondent No.5, who did not even appear for interview and who is ineligible for the post of BPM, Lalpani has been appointed to the said post on 4-5-2005 on extraneous considerations and in an unfair, illegal, arbitrary and corrupt manner, depriving the applicant of his legitimate claim for the post. It is also stated that on the same day the BPO, Lalpani was illegally shifted from the house of the applicant to a shop where the 5th respondent was a tenant. According to the applicant, out of the two General Category candidates, the applicant had higher marks in the HSLC examination than the other candidate and the applicant



states that the Hon'ble Calcutta Bench of this Tribunal vide its order in O.A.Nos.1357/2002 and 748/2003 dated 17-12-2004 held that merit alone is the criteria for appointment to the post of GDS BPM. [A copy of the said Order of the Calcutta Bench is enclosed as Annexure 'VIII' to this O.A.]

(f) Being aggrieved with the illegal appointment of the 5th respondent to the post of GDS Branch Postmaster of Lalpani Branch Post Office depriving the applicant of his appointment to the said post although the applicant is legitimately entitled to get the post of the aforesaid GDS BPM due to retirement of his father from the said post for which the applicant was eligible for appointment, the applicant has moved this Tribunal seeking for the following reliefs:

"8.1 That the Hon'ble Tribunal be pleased to declare the appointment of Shri Saumitra Nath (Respondent No.5) as illegal and void-ab-initio and further be pleased to set aside and quash the same.

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to appoint the applicant to the post of GDS BPM of Lalpani BPO w.e.f. 04.05.05 with all consequential benefits.

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."

3. (a) The respondents have opposed the application by filing a counter reply. The respondents submit that when the post of BPM of Lalpani BO fell vacant on retirement of the regular incumbent, an advertisement was made for regular appointment against the vacant post vide SSPOs, Cachar Division, Silchar letter No.416 dated 31.1.2003 through the Employment Exchange, Hailakandi. The said post was kept reserved for the OBC quota and selection had to be made from OBC Cadre only. But the Employment Exchange, Hailakandi could not sponsor the names of the required number of OBC candidates against the said advertisement and replied vide No.VII-6(A)/2003 351



dated 24-4-2003 that as no application was received for the post in question from candidates fulfilling the criteria, they could not forward the same from their end. As such, a re-notification was issued through the Employment Exchange vide SSPOs, Cachar Division, Silchar letter No.A-416 dated 16-6-2003 with condition that the post is for reserved candidates but made open for other community if required number of applications from OBC candidates is not received. There was no response from the Employment Exchange and, as such, 11 (eleven) applications including OBC and OC were received for the post from open market by issuing local notice.

(b) The respondents further state that vide letter dated 18-10-2004 all the applicants were directed to attend the Manipur Bagan Sub Post Office with all original certificates/documents for verification by the Inspector of Post Offices on 27-10-2004. The respondents mention that the letter dated 18-10-2004 was issued for verification of documents and not for any interview.

(c) It is then submitted by the respondents that there were 11 (eleven) applications including OBC and OC candidates obtained from direct channel and those were entertained. Out of 11 (eleven) applications, 8 (eight) were from OBC candidates. On examining the applications and documents, OBC certificates produced by 4 (four) candidates were found not genuine and two (two) applicants belonging to OBC were found to have passed HSLC examination as compartmental. The selection for the post was made from the rest 2 (two) OBC candidates. Shri Saumitra Nath, respondent No.5, was the candidate amongst the 11 (eleven) applicants and he belongs to OBC caste and the Caste Certificate produced by him was found genuine and accordingly he was selected after observing all formalities. The respondents further state that there is no denial of justice as the applicant belongs to OBC community and the post was reserved for OBC. As such, an OBC candidate has been selected.



4. We have heard Mr M Chanda, learned counsel for the applicant and Mr M.U.Ahmed, learned Additional Central Government Standing Counsel for the respondents. We have gone through the respective pleadings of the parties including the rejoinder filed by the applicant and also perused the documents produced before us by the respondents.

5. The undisputed facts of the case are that the applicant applied for the post of GDS Branch Post Master, Lalpani BPO in response to the notification issued by the respondents dated 16-6-2003 which is enclosed as Annexure'IV' to the O.A. The applicant belongs to general category. The marks obtained in HSLC examination by the applicant are higher than the 5th respondent who belongs to OBC category. It is also not in dispute that the said post fell vacant due to the retirement of the father of the applicant.

6. It is the specific case of the applicant that since he obtained more marks in HSLC examination than the 5th respondent and merit alone is the criteria for appointment to such post, the respondents are not justified in appointing the 5th respondent ignoring the applicant. The applicant placed reliance on the judgment of the Calcutta Bench of the Central Administrative Tribunal in the case of Subhasis Sarkar and Anr. v. Union of India and Ors reported in 2005(1) ATJ, 530, copy of which is enclosed as Annexure'VIII' to the O.A. He further submits that the 5th respondent did not attend the interview held on 27.10.2004. It is also the case of the applicant that it was clearly provided in the advertisement dated 16.6.2003 (Annexure'IV') that the post was meant for OBC and open category candidates and, as such, merit alone is the sole criteria for selection and no candidate can be selected as being OBC candidate or otherwise ignoring merit, as per law.

7. The very facts that the post that had fallen vacant was held by the father of the applicant and that the applicant performed the duties in the said posts during the leave period of his father, do not give rise to any right to the applicant to be appointed in the said post.

8. Secondly, a plain reading of paragraph 2 and 3 of the Notification dated 16.6.2003, which enclosed as Annexure 'IV' to the O.A would show that the post was reserved for OBC failing which by any community in order of preference indicated therein. The said paragraphs 2 & 3 are reproduced below:-

"2. *The vacancy is reserved for OBC/any community.*
3. *In case the minimum number of three eligible candidates belonging to the above reserved community do not offer their candidature, the candidates belonging to OC community will be considered (in order of preference indicated herein)."*

9. From the counter reply and the relevant documents produced by the respondents, we find that respondents received 11 (eleven) applications altogether including the application of the applicant and out of 11 (eleven) applications, there were 8 (eight) applications from OBC candidates. However, 4 (four) out of 8 (eight) applicants could not be considered for production of such OBC certificates which were found not genuine and out of the remaining 4 (four) OBC candidates, 5th respondent, who is admittedly an OBC candidate was selected by the respondents. That being so, when more than 3 (three) applications were available for consideration of OBC candidates, as per the notification dated 16.6.2003, as extracted above question of consideration of the candidature of the applicant, who is admittedly not an OBC candidate, did not arise. The applicant is not correct in contending that as per notification dated 16-6-2003 (supra) the OBC and other candidates are to be considered. The judgment relied upon by the applicant is not applicable in his case. The facts



and issue involved are different in that case.

10. In view of the above, we find no infirmity in the action of the respondents. The applicant is not entitled to get the relief prayed for. The application is devoid of merit and is dismissed accordingly with no order as to costs.



GAUTAM RAY
MEMBER(A)



G SHANTHAPPA
MEMBER(J)

2 AUG 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench.
GUWAHATI BENCH: GUWAHATI

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

O. A. No. 204 /2005

Shri Anup Misra
-Vs-
Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

01.03.2002- Father of the applicant retired from service after serving as Branch Post Master (BPM) of Lalpani Branch Post Office for 25 years.

20.04.2002- Applicant and father of the applicant submitted separate representations praying for appointment of the applicant to the post of GDS BPM of Lalpani BPO, vacated by the father of the applicant on the ground that the applicant had the requisite qualifications and experience of working in the said post earlier on temporary basis during leave period of his father, and since the said BPO had been functioning in their house from 1973 on rent-free basis. (Annexure-III Series)

31.01.2003- Advertisement published inviting applications for recruitment to the post of GDS BPM, Lalpani. Applicant applied but subsequently the recruitment was not processed.

16.06.2003- Post of GDS BPM, Lalpani re-advertised, applicant applied again for the post. (Annexure-IV)

18.10.2004- Applicant called for interview to be held on 27.10.04. (Annexure-V)

27.10.2004- Applicant appeared for interview alongwith two other candidates. Out of two General category candidates, the applicant had higher marks in the HSLC examination than the other candidate.

04.05.2005- One Shri Saumitra Nath, Respondent No. 5 who did not even appear for interview and who is ineligible for the post of BPM, Lalpani has been appointed to the said post on extraneous considerations and in an unfair, illegal, arbitrary and corrupt manner, depriving the applicant of his legitimate claim for the post.

Anup Misra

On the same day, the BPO, Lalpani was illegally shifted from the house of the applicant to a shop where Shri S. Nath was a tenant.

17.12.2004 Hon'ble CAT, Kolkata Bench in it's judgment and order held that merit alone is the criteria for appointment to the post of GDSBPM.

(Annexure- VIII)

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 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):

1. That the Hon'ble Tribunal be pleased to declare the appointment of Shri Saumitra Nath (Respondent No. 5) as illegal and void-ab-initio and further be pleased to set aside and quash the same.
2. That the Hon'ble Tribunal be pleased to direct the respondents to appoint the applicant to the post of GDS BPM of Lalpani BPO w.e.f. 04.05.05 with all consequential benefits.
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.

Interim order prayed for:

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

1. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar to the respondents in considering the representations of the applicant for his appointment to the post of GDS BPM, Lalpani BPO.

Anup Misra

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

Title of the case : O.A.No 204 /2005

Shri Anup Misra. : Applicant.

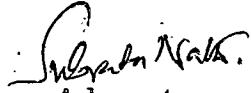
-Versus-

Union of India & Ors. : Respondents.

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Filed By:


Anup Misra
Advocate

Date:- 02.08.05.

Anup Misra

18

filed by the applicant
through: Subroto Nath
Advocate

02.08.05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 204 /2005

BETWEEN:

Shri Anup Misra,

S/o- Shri Apurba Kumar Misra,
Misra Bhawan,
P.O & Vill- Lalpani
(Via Manipur Bagan)
Dist- Hailakandi.
Assam- 788 165.

.....Applicant.

-AND-

1. The Union of India,

Represented by Secretary to the
Government of India,
Ministry of Communications,
Department of Posts
New Delhi- 110001.

2. The Chief Post Master General,
Assam Circle, Guwahati
Meghdoott Bhawan,
Guwahati- 781 001.

3. The Senior Superintendent of Post Offices,
Cachar Division,
Silchar, Assam.
Pin- 788 001.

4. The Sub-Divisional Inspector of
Post Offices, Hailakandi Division,
Hailakandi- 788 151.

5. Shri Saumitra Nath,
C/o- Shri Samar Nath,
P.O & Vill- Lalpani,
Dist- Hailakandi,
Assam- 788 165.

.....Respondents.

Anup Misra

DETAILS OF THE APPLICATION

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

This application is made not against any particular order but against the illegal appointment of the Respondent No. 5 to the post of GDS- Branch Postmaster of Lalpani Branch Post Office, in the district of Hailakandi, Assam, depriving the applicant of his appointment to the said post although the applicant is legitimately entitled to get the post of GDS BPM aforesaid due to retirement of his father from the said post, for which the applicant was eligible for appointment.

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 passed the Higher Secondary Examination in 2002 and further appeared in B.A Part-II examination in 2005. His name is registered with Employment Exchange, Hailakandi under Registration No. 2097/04.

(Copy of the certificate dated 01.07.2002 and Employment Exchange registration certificate dated 30.10.04 are annexed hereto for perusal of Hon'ble Tribunal as Annexure- I and II respectively).

Anup Misra

4.3 That the father of the applicant Shri Apurba Kumar Misra served as Branch Post Master of Lalpani Branch Post Office for long 25 (twenty five) years and eventually retired from service on superannuation on 01.03.2002. Following his retirement from service on superannuation one Shri Mrinal Kanti Kar, Postman of the said Branch Post Office had been given the charge of the said office purely on temporary basis. It is relevant to mention here that the Lalpani Branch Post Office had been functioning in the house of the applicant's father since 1973 on rent-free basis.

4.4 That the applicant begs to state that after retirement of his father from the post of Branch Post Master of Lalpani Branch Post Office, the applicant submitted one representation on 20.04.2002 to the Respondent No. 3, furnishing therein his bio-data and prayed for consideration of his appointment to the said post. His father, the retired Branch Postmaster of the said Branch Post Office, also submitted a similar application to the Respondent No. 3 on the same date. It is relevant to mention here that the applicant had the requisite qualification and eligibility for appointment to the said post and he performed the duties and responsibilities in the said post during the leave period of his father for which he has formally appointed by the Respondents. As such, the father of the applicant also submitted another application earlier on 11.01.2002 prior to his retirement praying for appointment of the applicant to the post of GDS BPM, Lalpani to be vacated by him, even on compassionate ground.

(Copy of representation dated 20.04.02 of the applicant and his father dated 11.01.02 are annexed hereto for perusal of Hon'ble Tribunal as Annexure- III series).

4.5 That it is stated that the post of GDS-Branch Postmaster (in short GDS BPM) of Lalpani Branch Post Office (BPO) was subsequently advertised vide No. A- 416 dated 31.01.03, copy of which however could not be

Apurba Misra

obtained. In the said advertisement, it was mentioned that the applications were invited for the post from the OBC candidates only. Note: work

The applicant, in response to the advertisement, once again submitted his application for the post on the basis of his qualification, experience, other eligibility, and his earlier representation etc., although to the said post against the advertisement stated above was eventually not processed.

4.6 That thereafter, the said post of GDS BPM, Lalpani was again advertised vide Re-notification dated 16.06.03 due to non-receipt of sufficient applications in response to the earlier advertisement. In the said advertisement, the said vacancy was made open for the OBC and any community. It was further laid down in para 3 of the advertisement that in case the minimum number of three eligible candidates belonging to OBC do not offer their candidature, the candidates belonging to other community (OC) will be considered (in order of preference indicated therein). Re-notification ✓

(Copy of re-notification dated 16.06.03 is annexed hereto for perusal of the Hon'ble Tribunal as Annexure -IV).

4.7 That in response to the re-advertisement dated 16.06.03, the applicant again applied for the post of GDS BPM, Lalpani in the prescribed format, furnishing therewith all the relevant documents as prescribed. This time also the requisite number of applications from eligible OBC candidates as stipulated under para 3 of the advertisement were not received. As such three candidates were ultimately called for interview vide letter dated 18.10.04 which included two general category candidates including the applicant. The applicant accordingly appeared for interview on 27.10.04 as directed. ✓

(Copy of call letter dated 18.10.04 is annexed herewith for perusal of Hon'ble Tribunal as Annexure- V).

Anup Misra

G.M.

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4.8 That the applicant begs to state that amongst the two general candidates who appeared in the interview, the applicant had higher marks than the other candidate in HSLC examination, in addition to his experience and functioning of the BPO in his own house. It is relevant to mention here that the minimum educational qualifications for the post as stipulated in the advertisement are HSLC/X Standard pass. As per rule marks of H.S.L.C examination is the sole criteria, for selection to the post of GDS BPM.

As such the applicant is legitimately entitled for appointment to the post of GDS BPM, Lalpani in all counts.

4.9 That surprisingly, on 04.05.05, one Shri Saumitra Nath, Respondent No. 5, suddenly joined in the post of GDS BPM, Lalpani who was not even a candidate for the post against the advertisement aforesaid and not interviewed also. It is understood that said Shri S. Nath was appointed by Shri Kuleswar Sarma, the then Superintendent of Post offices, Silchar, Cachar Division. It is relevant to mention here that Shri Sarma was functioning as Superintendent in Officiating capacity for two months only during which he appointed Shri S. Nath as stated above, only one day before he retired from service, which was done on extraneous considerations and through unfair and illegal means. The said post was kept vacant by his predecessor Shri J.K. Borbhuyan, Superintendent for long time which was in process for recruitment through procedures established by law only, but Shri K. Sarma taking advantage of his short tenure of two months as Superintendent, resorted to unfair and illegal practice and appointed Shri S. Nath to the said post without caring for any procedure of recruitment whatsoever.

charge
is not
proved

4.10 That it is stated that on the very day of his joining i.e. on 04.05.05 itself, Shri Saumitra Nath also shifted the BPO from the house of the applicant to a shop where the said Shri Nath is a tenant and such shifting was done under the supervision and presence of the Respondent No. 4 which was pre-

R-5

Anup Misra

planned. It is relevant to mention here that as per rules, the BPO has to be housed in the own residence of the GDS BPO and for this reason only the said BPO was functioning since 1973 in the house of the applicant since the father of the applicant was the GDS BPM of the BPO, Lalpani. But on 04.05.05 it was illegally shifted to a shop which is not the own house of Shri Nath but a rented one only, which is violative of the rules of GDS BPO.

4.11 That the applicant begs to state that the said Shri Saumitra Nath was an appointed agent of Sahara India Commercial Corporation Ltd.; which is evident from a receipt dated 31.08.04 pertaining to the transaction made by Shri Nath one of his clients Smti. Anita Paul in his capacity as Agent. As per, condition laid down in para 6 (vii) of the advertisement dated 16.06.03 (Annexure- IV), the candidate should not be an agent of LIC or other insurance/finance companies and as such Shri Saumitra Nath being an Agent of Sahara India Commercial Corporation Ltd.; cannot be appointed as GDS BPM, which is illegal. The proof of his agency was sent to the Superintendent of Post Offices, Silchar by the applicant but even thereafter Shri Nath was illegally appointed as GDS BPM, Lalpani. Later on, Shri Nath managed to get his agency of Sahara transferred in the name of his elder brother Shri Samar Nath.

(Copy of agency receipt dated 31.08.04 is annexed herewith for perusal of Hon'ble Tribunal as Annexure- VI).

4.12 That the applicant most respectfully begs to state that during the leave of his father, the applicant was appointed to function as substitute in the post of GDS BPM, Lalpani in place of his father for the period from 15.10.01 to 24.10.01 vide order No. A-416/PF dated 30.10.01, which he performed most faithfully and efficiently. As such, he acquires working experience in the post of GDS BPM, Lalpani and hence eligible to succeed his father in the said post following retirement of his father from the said post, which he has illegally been deprived of.

✓ Substitute
✓ 15-10-01
+
24-10-01

Anup Misra

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(Copy of order dated 30.10.01 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- VII).

4.13 That the applicant most respectfully begs to submit that he fulfilled all the eligibility criteria for the post of GDS BPM, Lalpani as stipulated in the advertisement, he had better marks in HSLC examination, working experience in the post and the said BPO was functioning in his own house since 1973 on rent-free basis. As such he is legitimately expectant and bonafide candidate for the post of GDS BPM, Lalpani, more so, since the said post was held by his father for long 25 years before it fell vacant. But the applicant has been appointed thereto in an arbitrary, unfair, malafide and illegal manner. It is pertinent to mention here that the mark of H.S.L.C examination is the sole criteria for selection to the post of CDS BPM, in this connection applicant relies on the judgment and order dated 17.12.2004 passed in O.A. No. 1357/2002 and 748/2003 by the Hon'ble CAT, Calcutta Bench, reported in ATJ 2005 (1) 530.

(A copy of the judgment and order dated 17.12.04 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- VIII).

4.14 That due to non-appointment of the applicant as GDS BPM, Lalpani inspite of his full eligibility, the applicant has been suffering great losses and has been denied justice. As such finding no other alternative, the applicant is approaching this Hon'ble Tribunal for protection of his rights and interests and it is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interests of the applicant, directing the Respondents to appoint as GDS BPM, Lalpani with all consequential benefits.

4.15 That your applicant submit that, inspite of his best effort, the applicant could not collect the copy of appoint order of Respondent No. 5, therefore, the Hon'ble Tribunal be pleased to direct the respondents to produce the same before the Hon'ble Court and further be pleased to direct the

Anup Misra

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respondents to produce all the documents relating to selection of the Respondent No. 5 to the post of GDS BPM, Lalpani BPO.

4.16 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 father of the applicant worked as the Branch Post Master of Lalpani BPO for long 25 years and only after his retirement on 01.03.2002, the said post of BPM fell vacant.

5.2 For that, the BPO, Lalpani was functioning in the house of the applicant's father since 1973 on rent-free basis.

5.3 For that, the applicant performed the duties of BPM, Lalpani during the leave period of his father on temporary basis.

5.4 For that, the applicant possesses requisite qualifications for the post of GDS BPM, Lalpani and has got experience as well. As such he has acquired a valuable legal right for appointment in the said post, at least on compassionate ground.

5.5 For that, the applicant fulfilled all the eligibility criteria for the post specified in the advertisement and he was also interviewed for the post. His marks in the HSLC examination were higher than the other candidates who appeared in the interview and as such he is the legitimate expectant for the post.

5.6 For that, the father of the applicant and the applicant himself submitted representations to the competent authorities for consideration of his appointment to the post of GDS BPM, Lalpani at least on compassionate ground.

5.7 For that, the applicant is unemployed and is being deprived of his right to live as guaranteed by the Constitution.

5.8 For that, one Shri Saumitra Nath, Respondent No. 5, who is not only ineligible for the post of GDS BPM but even did not appear in the interview for the said post, has been appointed to the said post on

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extraneous considerations and resorting to an unfair, illegal, corrupt and arbitrary manner.

6. **Details of remedies exhausted.**

That the applicant declares that he has exhausted all the remedies available to and there is no other alternative 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 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 Hon'ble Tribunal be pleased to declare the appointment of Shri Saumitra Nath (Respondent No. 5) as illegal and void-ab-initio and further be pleased to set aside and quash the same.
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to appoint the applicant to the post of GDS BPM of Lalpani BPO w.e.f. 04.05.05 with all consequential benefits.
- 8.3 Costs of the application.

Anup Misra

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 the application, the applicant prays for the following interim relief: -

9.1 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar to the respondents in considering the representations of the applicant for his appointment to the post of GDS BPM, Lalpani BPO.

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11. Particulars of the I.P.O

i) I.P.O No. : 20 G J 56 483
ii) Date of issue : 29.7.05
iii) Issued from : G.P.O. Guwahati
iv) Payable at : G.P.O. Guwahati

12. List of enclosures:

As given in the index.

Amit Misra

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VERIFICATION

I, Shri Anup Misra, S/o- Shri Apurba Kumar Misra, aged about 24 years, resident of Misra Bhawan, P.O & Vill- Lalpani (Via Manipur Bagan), Dist- Hailakandi, Assam- 788 165, 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 31st day of July, 2005.

Anup Misra

ANNEXURE-I

OFFICE OF THE PRINCIPAL C. M. H. S. SCHOOL

P. O. Katlicherra

Dist. Hailakandi

PIN 788161,

PROVISIONAL CERTIFICATE.

No- CMHS/CE&T/

Date 01-07-2002

This is to Certify that Surati Anup Misra
 son/daughter of Apurba Misra duly passed
 the H.S.I.H. S. L. C. Compartmental examination 19 2002
 in Arts stream, as a regular private Candidate from this Insti-
 tution with roll 673 no A-4 and was
 placed in 1st II - (Second) division.

His/Her date of birth/Registration No is 11.7.795 of 2000-01
 Nothing is Known against his/her Character,

Checked & verified

Surati 10/2
 Vice-principal/Head Assst.
 C. M. H. S. School,
 Katlicherra, Hailakandi

20/12/02
 20/12/02

Surati 10/2

Surati 10/2
 Principal
 C. M. H. S. School
 Katlicherra Hailakandi

A. H. S. J. Advocate

ANNEXURE-II

Assam Schedule LXIII, Form No. II

X-10(B)

GOVERNMENT OF ASSAM
DEPARTMENT OF LABOUR
EMPLOYMENT EXCHANGE *Hukam Kewal*

IDENTITY CARD
(Not an interview card for interview with employees)

1. Name of Applicant *Joseph Plisura*.....
2. Date of Registration *30/10/04*.....
3. Registration No. *2097/04*.....
4. N. C. O. Code No. *X01120*.....
5. Date of Birth *09.02.81*

INSTRUCTION TO APPLICANT

<p>(a) Bring this card with you whenever you come to the Exchange. (b) Quote your Registration Number and N. C. O. Number whenever you write to the Exchange. (c) Renew your Registration every three months. <i>every 3 months</i> <u>If you do not renew by the due date your registration will be cancelled.</u> (d) You can renew your registration personally or by post. For renewal by post DO NOT SEND THIS CARD. Apply to the Exchange on a REPLY PAID POST CARD.</p>	<p>Date before which registration should be renewed <i>30/10/07</i></p>

S. S. S. S. S.
S. S. S. S. S.
Advocate

2. (e) Return this card when you no longer require employment assistance after filing the following entries.

1. * I have secured employment with

.....
(Name of Employe)
through *you* my own effort.

2. * I no longer require employment assistance.

(Signature of Applicant)

Date..... 199

Affix postage
stamp here

Andy Minor

FOR OFFICIAL USE ONLY	
* Signature	
Identification Marks	
1.	2.
<i>10/10/09</i>	
Y Envelope signed Employment Officer	
Delete inapplicable entries. <i>10/10/09</i>	

AGP. EX III E. 11 No. 2163-04

To

The Employment Officer
Employment Exchange

Registered with A/P

ANNEXURE-III (series)

✓

To

The Superintendent of Post offices,
Cachar Division, Silchar (788001)

Subject:- Superannuation of EDA and the
appointment of nominee on
compassionate Ground.

Sir,

As per your memo no A/416/PF dated 12-12-01, I was asked to go on superannuation from 28-2-2002. In this connection I have submitted an appeal (Xerox Copy) to you to review my case and to consider to extend my service for some time more.

During the period of my leave of absence, my son Shri Anup Misra had performed the duties quite satisfactorily. His assignment was approved and paid, the latest spell of leave being from 15-10-01 to 24-10-01. He has acquired considerable experience and can discharge the responsibility to the satisfaction of the authority. So, I humbly request you kindly to appoint him as EDA, ~~on my retirement~~, even if necessary, on compassion ground. In this case there will be no additional liability of the Deptt (except monthly pay and DA) as he can perform his duties from the same place and same house (rent free - see accommodation). He conforms to the norms of such appointment. A brief bio-data is enclosed for your perusal.

In view of this position and on the circumstances outlined above, I shall be highly obliged if you kindly offer him an appointment of EDA in my place, on my retirement.

* (Name) BIC-DATA

1) Sri Anup Misra Ayurba Kumar
2) Father's name:- Shri Arvind Misra
3) Permanent Address, Lalapani, (Pin: 788165)
4) National Status- citizen of (Bhutan)
5) Date of birth :- 28-2-1981
6) Educational Qualification :- (a) Matriculate (2000)
7) Practical experience:- (b) Appearing first & High Secondary Exam
8) Name:- Anup Misra Worked as nominee of EDA from time to time, the last spell being from 15-10-01 to 24-10-01

Yours faithfully,

(APURBA KUMAR
MISRA)

EDA, Lalapani B.O.
PIN. 788165

(2000) Date - 11-01-02

(b) Appearing first & High Secondary Exam
24-10-01

After 10
Advt

The Senior Superintendent of Post offices,
Cachar Division, Silchar, (188005)

Subject:- Appointment of E.D. B.P.O.

Sir,

With due respect and humble submission,
I beg to lay the following prayer before your good-
self for favor & kind consideration and
necessary action:-

That Sir, my father Shri Apurba Kumar Misra
retired from Service on and from 1-3-2002
after rendering continuous service as B.P.O.
Lalpani B.O. (under Silchar Bagan S.O.,
Hailakandi) for 25 years. I was his nominee
and performed the duties during his absence,
and got the remuneration as mentioned in
the Bill I shall, therefore, be highly obliged if you
very kindly do up me the job which is likely to
fall vacant after the temporary arrangement
is over, in view of my experience and suitability.

The particulars regarding myself are
furnished below:-

- 1) Name:- MR. ANUP MISRA
- 2) Father's name and occupation :- Shri Apurba Kumar Misra
Retired as B.P.O. Lalpani B.O.
- 3) Permanent address :- "Misra Jhabin" B.O. Lalpani,
J.S.: Katlickerra, Dist. Jharkhand
- 4) National Status:- Citizen of India.
- 5) Date of birth :- 28-2-1981
- 6) Qualification :- I.C.S.C. passed. Appeared at
Passed Higher Secondary Exam. of Higher Secondary
Exam, held in February, 2002.
Copy of - Report not yet announced.
- 7) Practical Experience:- Worked in Lalpani B.O.
as nominee of my father.
- 8) Other particulars, if any:-
 - (a) The post office has been functioning from our
own house for the last 25 yrs. The shop is not
required to incur any extra exp. except pay of
staff.
 - (b) Ready to furnish any other information, if necessary,
and comply with any other condition.

Dated:-

Yours faithfully
Anup Misra

Afft
Advocate

ANNEXURE-III (Series)

The Superintendent of Post offices,
Cachar Division, Silchar, (788001)

Dated:- 20th April 2002.

Subject:- Appointment of E.D. B.P.M.

Sir,

I retired as E.D. B.P.M. Laljani Branch office (under Manipur Bagan S.P.O. - Haikankali S.P.O.) from 1-3-2002, in terms of notice served in view of post offices, Cachar Division, Silchar, relinquishing charge, Shri Arun Kumar Misra, formerly a postman attached to Laljani B.C. has been given purely temporary charge of the post for a limited post.

In this connection, I like to state that I worked as B.P.M. Laljani B.C.O. for the last 25 years. The post office has been functioning from my own house very conveniently located and suitably accommodated. During this long period of 25 years, the Deptt. has not required to incur any expenditure on accommodation, rent or maintenance. My son Sri Arun Misra was my nominee and he satisfactorily performed this duty during my leave of absence, (only approved by the Deptt.).

On receipt of retirement notice I applied to the Sr. Superintendent of Post offices, Cachar Division Silchar to offer an appointment to my son Sri Arun Misra, who was my nominee and who is qualified for such a post. The copies of these letters are enclosed for your kind perusal and sympathetic consideration.

I am also sending herewith an application from my son Sri Arun Misra showing the "BioData" as far as practicable. In - the absence of any prescribed application form, I furnish the following in plain paper. However in addition, if any further information is required I am ready to furnish the same and comply with any other requirements as and when necessary.

66
Misra Bhawan
P.O.:- Laljani (788165)
(via) :- Manipur Bagan (S.O.)
Dist:- Haikankali
20th April, 2002

Yours faithfully
Aruna Kumar Misra
(ARUNA KUMAR MISRA)

Attested
by Advocate

DEPARTMENT OF POSTS:INDIA

Office of the

(A-2) (ii) 35

No. A-416

Dated at Silchar the 16-06-03

RE-NOTIFICATION

Sub. Appointment to the post of GDS Branch Postmaster Lalpani BO

1. (i) The above vacancy was notified vide this office No. A-416 dtd 31-01-03 by reserving it for OBC/ by not reserving it for any community. The vacancy has been re-notified due to non-receipt of sufficient number of applications within the stipulated date.

(ii) Applications in the enclosed proforma are invited for the above post from the intending candidates fulfilling the following eligibility conditions. The applications complete in all respects should reach the office of the undersigned on or before 15/7/03. The application should be submitted in closed covers only, duly superscribed in bold letters as "APPLICATION FOR THE POST OF GDS BPM Lalpani B.O." Incomplete applications, applications without prescribed enclosures and applications received after the due date will not be entertained. Applications of the candidates those who have applied earlier have been treated as cancelled and they should also apply a fresh within the target date.

2. The vacancy is reserved for OBC/ any community.

3. In case the minimum number of three eligible candidates belonging to the above reserved community do not offer their candidature, the candidates belonging to OC community will be considered (in order of preference indicated herein).

4. The appointment is purely temporary and in the nature of a contract liable to be terminated by the competent authority at any time with one month's prior notice. The work is part time for a period of 1 to 5 hours a day and the appointment will not confer any right on the candidate to claim any regular full-time post in the department. The post carries time related continuity allowance of Rs 1600/- plus admissible DA.

5. Any kind of influence brought by the candidates regarding appointment, will be considered as a disqualification. No correspondence attempting to influence the selection process will be entertained.

*After
Advocate*

6. ELIGIBILITY CONDITIONS:

(To be fulfilled as on the last date fixed)

(i) AGE

Above 18 years and below 62 years of age as on the last date for receipt of applications.

(ii) MINIMUM EDUCATIONAL QUALIFICATIONS:

HSLC/ X Standard pass

No weightage is given for higher qualification. However this does not bar the candidates with higher qualification from applying for the post.

(iii) RESIDENCE

Candidates belonging to places other than Post Office village, can also apply for the post and such candidate should shift the residence to PO village in the event of his/ her selection. The selected candidate should produce a proof to that effect within the date prescribed by the undersigned after selection.

(iv) ACCOMMODATION

The candidate selected should provide free accommodation to house the Post Office.

(v) INCOME AND PROPERTY:

(a) The candidate should have an independent source of income for his/ her livelihood. Income certificate in candidate's own name (indicating clearly the office of income) issued by Revenue/ competent authority should be furnished in the enclosed proforma. Income in the name of guardian/ others will not make the candidate eligible for the post. Only the candidates who fulfil this condition and all other eligibility conditions will be eligible to apply for the post.

(b) Preference will be given to those candidates who derive income from the landed property/ immovable assets in their own name. A copy of the record of rights of property issued in respect of property in the name of candidate only, should be enclosed. Joint property or hereditary property not transferred in the name of candidate will not be considered as property in the name of the candidate. The landed property/ immovable assets purchased/ transferred in the name of the candidate subsequent to the submission of application but before the last date for receipt of applications, will be considered only if the copy of record of rights as mentioned above, and income certificate issued by Revenue/ competent authority indicating the income from such property, are submitted to reach the undersigned on or before the last date fixed for receipt of applications.

(vi) The candidate should not be an elected member of the panchayat/ other statutory bodies.

(vii) The candidate should not be an agent of LIC or other insurance/ finance companies.

*After
Lok
Akhada*

7. DOCUMENTS TO BE ENCLOSED:

Copies of the following certificates/ documents should be enclosed to the application, invariably. If any of these enclosures listed below do not accompany the application, the application is liable to be rejected outright. The originals need not be sent. They may be produced for verification when called for.

- (i) School leaving certificate or certificate regarding date of birth.
- (ii) Marksheets of HSLC (and higher qualification if any).
- (iii) caste certificate issued by the competent authority in the enclosed proforma. (in case of candidates belonging to SC/ST/OBC)
- (iv) Record of rights of property (if property is in the name of candidate only. If no such property exists, this enclosure is not insisted upon).
- (v) Income certificate in the name of candidate issued by competent authority in the enclosed proforma.
- (vi) Two character certificates issued by prominent persons of the locality.

8. If any information furnished by the candidate is found to be false at a later date, the selection/ appointment is liable to be terminated apart from criminal prosecution.

Enclo:

1. Proforma of application.
2. Proforma of caste certificate (whichever applicable)
3. Proforma of income certificate.

S/1
वरिष्ठ डाक अधीक्षक

कालाड मंडल सिलचर-788001

Signature/uptd. of Post Offices
Designation/Division Silchar-788001

Copy to (Regd. M)

1. The President, Gaon Panchayat Manipur Niskar.
2. ~~The Head Master Govt. Primary/ High School Manipur Bagan
Lalpani~~
4. SPM Manipur Bagan (Account Office)
5. ~~The ASPOS EC / SDI (P) Hailakandi Sub Dn (for display on the notice board
and for wide publicity).~~

✓
वरिष्ठ डाक अधीक्षक

कालाड मंडल सिलचर-788001

Signature/uptd. of Post Offices
Designation/Division Silchar-788001

After
Mr.
Advocate

APPLICATION FOR THE POST OF _____
WITH REFERENCE TO LETTER/NOTIFICATION No. _____

Dated _____ of _____

1. Name in full : _____
2. Present address : _____
3. Permanent address : _____
4. Whether SC/ST/OBC (enclose :
the certificate issued by
competent authority) : _____
5. Date of birth :
(enclose the school leaving cert-
ificate or birth certificate) : _____
6. a) Educational qualification :
(enclose copies of certificates)
b) Marks obtained in HSLC : _____
7. Particulars of landed/immovable :
property etc. held in the name of
candidate only.
(enclose copy of record of right) : _____
8. INCOME:
i) Annual income : _____
ii) Source of income :
(enclose income certificate issued
by Revenue/ competent authority
specifying the source of income in
the name of candidate) : _____
9. Enclose two character certificate:
issued by prominent persons of
your locality. : _____

*Atul
Advocate*

10. Do you know cycling

11. If you are not a resident of the post village, are you prepared to shift your residence to the PO village, in the event of your selection

12. Can you provide free accommodation to house the PO in PO village.

13. Whether you hold any elected post? If so furnish details.

14. Are you an agent of LIC or any other insurance/finance company? If so give details.

I hereby declare that the information furnished above is true and correct to the best of my knowledge. I understand that if the information is found to be false at a later date, my candidature/selection/appointment is liable to be cancelled/terminated apart from criminal prosecution.

Signature of the candidate
(Name & address)

Place :

Date :

Enclosures :

- School leaving certificate or birth certificate
- HSLC mark sheet.
- Caste certificate(if belonging to SC/ST/OBC) issued by competent authority.
- Record of rights (landed/other immovable property).
- Income certificate issued by competent authority in the name of the candidate only.
- Two character certificates from

Note : Tick in the box for the certificate enclosed.

Dept of Posts, India

sp

Regd n/2

Of
Sub-Div. Inspector of P.C.I.
Mallakandi Sub-Division
Mallakandi- 788131

To

(7) Sri Ranjeet Ram

P. O Lalpani

(8) Smti Paramita Dutt
P. O Lalpani(9) Sri Anup Misra
P. O Lalpani

In P. O Lalpani | 2004 dated 21/10/04

Sub - Verification of Certificates | documents
- for selection of G.D, S.B, P.M Lalpani.

You are hereby requested to attend
at Manipur Bagan Sub Post Office on
27/10/04 (Wednesday) at 1330 hrs with all
original Certificates | documents in which
subject cited as above.

Attested

Sub-Div. Inspector of P.C.I.
Mallakandi Sub-Division
Mallakandi- 788131

Attested
Advocate

010112781463



SAHARA
INDIA PARIWAR

AGREED TO : SAHARA INDIA COMMERCIAL CORP. LTD

Receipt Type : 0

10112781463

COMMAND OFFICE : SAHARA INDIA BHAWAN, 1, KAPOORTHALA COMPLEX, LUCKNOW-226 024

Receipt No. :

Branch Name & Code

31/08/2004

Date :

Received with thanks for the credit of Smt. ANITA

CHEQUE NO. : 2093920268

Account No. : 2011111111111111

Code : 209311057

Cadre : 14

Through : SUMITRA NATH

(Field Worker/ Collector/ Employee/ Party Name)

Document Reference	F.A. Code	Account Head or Scheme	Amount
333021867623	501218	SAHARA RAJAT YOJNA (Opt-C) M	10000
333021867623	501005	REGISTRATION FEE (S. I. C. C. L)	4



SAHARA
INDIA PARIWAR

Total Amount in Words : Rupees Ten thousand Four only

Printed By : BIPUL CHANDRA SARMA 12016

Full Signature of Cashier / Authorised Person
 Name :
 Employee Code : 

Note : 1. The terms and conditions of the scheme like period, rate of interest / Bonus etc. are mentioned in the certificate / pass-book. 2. This receipt shall be treated as provisional receipt in case of payment by the investor / depositor in cheque / draft. A fresh receipt shall be issued in lieu of this receipt after realisation of cheque / draft. 3. Please receive Rs. 20,000/- and above by way of account payee cheque / draft.
 4. Please preserve this receipt for future reference.

OFFICE SEAL





SAHARA INDIA (R) AGENT TO :
 SAHARA INDIA COMMERCIAL CORPORATION LIMITED
 COMMAND OFFICE : SAHARA INDIA BHAWAN, 1, KAPOORTHALA COMPLEX, LUCKNOW-226 024

Receipt No. 010112781463

Branch H.R.D. Sector 81L

Serial No. 24300

2746659

Received with thanks from Shri/Smt./Miss ANITA PAUL
 Resident of LAL PAUL

Region 647

under Sahara Swarn Yojna Option (A) Rs. _____ in lump Sum Option (B) undertake to pay in Instalments of Rs. _____ p.m. for 10 months payable on or before 15th of every month / Option (C) Rs. ₹ 10,000/- in lump Sum under Sahara Rajat Yojna (Rupees in words TEN THOUSAND ONLY) as advance for purchase of immovable property (Housing unit/ Commercial unit) and/or products of Sahara India Commercial Corporation Limited and /or its business associates and/or avail Services of Sahara India Commercial Corporation Limited or its business associates as per the terms and conditions of the Company.

Given on this 31st day of Aug 2004

(Office Seal)

Authorised Signatory REKHSI

Application No. _____
 आवेदन पत्र रो.

Pass Book No./ पास बुक रो.

24300

2746659



SAHARA INDIA (R) AGENT TO :
 SAHARA INDIA COMMERCIAL CORPORATION LIMITED,
 COMMAND OFFICE : SAHARA INDIA BHAWAN, 1, KAPOORTHALA COMPLEX, LUCKNOW-226 024

Name of Applicant
 आवेदक का नाम
 Mark of Identification
 पहचान का चिन्ह

Date of Birth/जन्म तिथि

Name of Father/Husband
 मिता / पति का नाम

Postal Address/पत्राचार का पता

Telephone No./टेलीफोन नं.

Name of Joint Applicant
 राशुकर आवेदनकर्ता का नाम

Name of 1st Nominee
 प्रथम उत्तराधिकारी का नाम

Name of 2nd Nominee
 द्वितीय उत्तराधिकारी का नाम

ANITA PAUL _____

_____ Age/आयु 42 Years/वर्ष

AJIT KR PAUL _____

LAL PAUL, HAILAKANDI

0384928250

AJIT KR PAUL / HAILAKANDI

DEPARTMENT OF POSTS : INDIA
OFFICE OF THE SR. SUPDT. OF POST OFFICES: CACHAR DN: SILCHAR-788001

Memo No. A - 416/PF

Dated at Silchar the 30/10/01.

Line 11.11.01

sri/Smt. Apurba Kr. Misra B.P.M. Hailakandi
account with ... Manipur being under Silchar/Karimganj
Hailakandi H.O is permitted to proceed on leave without allowance
for ... 10 days with effect from 15/10/01
to ... 21/10/01 (Paid leave)

The appointment of Sri/Smt. Apurba Kr. Misra ...
as his/her substitute is approved on the clear understanding that
the substitute may be discharged by the appointing authority at
any time without assigning any reason.

Sd/-
Sr. Supdt of Post Offices
Cachar Dn. Silchar-788001

Copy to:-

1. Sri/Smt. Apurba Kr. Misra B.P.M. Hailakandi
... Manipur being under Silchar/Karimganj
He is informed that if (1) this spell of leave grant
extended and thereby exceeds 180 days or (2) if during
12 months the leave taken in different spells exceeds
180 days, he/she will be removed from service according
to Rule 5 of P&T ED Agents (Conduct & Service) Rules 1961.
2. Sri/Smt. Apurba Kr. Misra B.P.M. Hailakandi
... Manipur being under Silchar/Karimganj
3. The Sr. Postmaster, Cachar Postmaster, Karimganj
Hailakandi H.O.
4. The SDIPOS/ASPOS Hailakandi

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

M. H. D.
Advocate

ए० सी० जी०-६१ /A.C.G-६१

भारतीय डाक विभाग
DEPARTMENT OF POSTS, INDIA

(देविए नियम 267, डाक-तार वित्त पुस्तिका का बाण्ड I, द्वितीय संस्करण)
(See Rule 267, Posts and Telegraphs Financial Handbook, Volume I,
Second Edition)

चार्ज की वदती पर चार्ज रिपोर्ट और नकदी और टिकटों की रसीद
Charge Report and Receipt for cash and stamps on transfer of charge

प्रमाणित किया जाता है कि
Certified that the charge of the office of

चार्ज (नाम) ने *Anup Misra*
was made over by (name)

(नाम) को *Anupba Misra* स्थान
to (name) *Lalganj* (place)

तारीख को पूर्वाह्न में

on the (date) after noon in accordance with

सं०
No. 24/16/01 तारीख
Dated

के अनुसार दे दिया।
from

Anupba Misra

भारतगाही अधिकारी डिप्टी
Relieving Officer

[क०प०उ० (P.T.O.)

भारतमुक्त अधिकारी
Relieved Officer

of us (G.S. Singhvi, J.) was a member, referred to the orders passed in C.W.P. No. 648 of 1985 - *Parshadi Lal v. State of Haryana and another*, decided on 12.7.1993; C.W.P. No. 16207 of 1995, decided on 12.12.1996; C.W.P. No. 13788 of 1996 decided on 5.2.1997; *Mrs. Asha Rani Lamba v. State of Haryana and others*, 1983(1) SLR 400; C.W.P. No. 245 of 1996 - *Nar Singh v. State*, decided on 9.4.1996; C.W.P. No. 17274 of 1995 - *Mam Raj v. State of Haryana*, decided on 14.5.1996; C.W.P. No. 1234 of 1996 decided on 10.12.1996; C.W.P. No. 15385 of 1997 - *B.R. Sharma v. State of Haryana and others*, decided on 6.1.1998; C.W.P. No. 10773 of 1997 - *Satnam Singh v. State of Punjab* decided on 3.2.1988 as also the judgments in *Vidya Parkash Hamal v. State of Haryana (supra)* and *Avtar Singh v. State of Haryana (supra)* and laid down the following proposition:

"The principle of no work no pay can be invoked by the employer to deny wages or pay to the employee only in those cases in which the employee voluntarily abstains from discharging the duties assigned to him/her. It cannot be applied in the cases in which the employee/worker is kept away from duty or is prevented or rendered ineligible to discharge duties of a particular post due to an act or omission of the employer."

In *Union of India v. K.V. Jankiraman*, AIR 1991 SC 2010, the Supreme Court unequivocally rejected the plea of the government that the principle of 'no work no pay' should be applied to all the cases of retrospective promotion and observed :

"We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of 'no work no pay' is not applicable in case such as the present one where the employee although is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee retails (remains ?) away from work for his own reasons, although the work is offered to him."

14. By applying the ratio of the above noted judgments and orders of the facts of this case, we hold that the learned Single Judge did not commit any error by declaring that the appellant cannot take advantage of its own wrong and by quashing order dated 6.9.1985 to the extent of denial of arrears of pay and allowances to the respondent for the period from 5.2.1974 to 7.2.1979.

In the result, the appeal is dismissed. Interim order dated 8.1.2002 is vacated. The appellant is directed to release the arrears payable to the respondent within a period of 3 months from today, failing which he shall be entitled to get interest at the rate of 9% from the date of this order.

Copy of the order be given *dasti* on payment of the fee prescribed for urgent application.

CENTRAL ADMINISTRATIVE TRIBUNAL
(CALCUTTA BENCH)

Original Application Nos. 1357/2002 and 748/2003
Decided on 17-12-2004

Subhasis Sarkar and anr.

Versus

Union of India and ors.

Applicants
Respondents

For the Applicants : Mr. B. Bhakat, Advocate.

For the Respondents : Mr. P.K. Chatterjee, Advocate for R Nos. 1 to 3 and
None present for R. No. 4.

PRESENT

The Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member.

The Hon'ble Mr. M.K. Misra, Administrative Member.

Appointment—Gramin Dak Sevak—Appointment to the post of GDSBPM—Merit alone is the criteria for appointment to the said post—Full Bench had already held that requirement of adequate means of livelihood in the shape of immovable property cannot be insisted upon—Decision of the Full Bench have the retrospective effect—Impugned selection/appointment quashed—Direction given to appoint the most meritorious candidate to the post in question

Cases Referred :

1. H Lakshmana and ors v. The Superintendent of Post Offices Bellary and ors, 2003 (1) ATJ 277.
2. Suresh Chandra Verma v. Chancellor Nagpur University, AIR 1990 SC 2023.
3. Gorachand Naskar v. Union of India and ors., 2004 (2) ATJ 620

ORDER

Mr. Mukesh Kumar Gupta, Judicial Member :— Since the issue raised in these two OAs are overlapping and raising out of same facts, they are being dealt with commonly.

2. On promotion of Ashit Kumar Kundu, the post of GDS BPM of Akna Nishintapur B.O. in account with Jhargram HO fell vacant with effect from 27.09.2002 and it was decided to fill up the said vacant post from amongst candidates belonging to un-reserved category. Accordingly a requisition was placed before the Employment Exchange for nominating eligible candidates. The last date for receipt of nomination from Employment Exchange was fixed as 15.10.2002. Simultaneously applications were also called from open market by issuing local notices. In total 39 candidates responded. Out of which two applications were rejected due to below age etc. out of 37 candidates called for bio-date verification on 11.11.2002, only 32 candidates appeared. On scrutiny of bio-data sheets following eight candidates came to limelight

Sl. No.	Name of the candidates	Marks obtld in percentage (3)	other Qns. (4)	Remarks (5)
1.	Sh Subhasis Sarkar (Applicant)	70%	Owned joint property	Not selected
2.	Sh. Rabi Sankar Mondal	65.44%	No landed property of his own. -do-	Not Selected
3.	Sh. Jayanta Kundu	64%	Had no deed (except parcha) & BL & LR O certificate	Not selected
4.	Sh. Tushar Kanti Chowdhury	60.11%	No landed property of his own	Not selected
5.	Sh. Debasish Banerjee	58%	Did not show any document in support of his landed property	Not selected
6.	Sh. Kinkar Mahato	56.25%	No landed property of his own	Not selected
7.	Tapas Gar	54.87%	Fulfilled all the eligibility	Selected
8.	Sanjoy Kr. Sinha (Pvt. Respondent No. 4)	54%	Conditions.	

3. It is contended by the applicant in O.A. No. 1357/2002 that despite he secured first division and obtained 70% marks he was not selected on the alleged ground that property held by him was a joint property. On the other hand respondent No.4 (applicant in O.A. No. 746/03), who had secured only 54% marks was selected.

4. The contentions raised in O.A. No. 1357/02 are that Sh. Sanjoy Kumar Sinha (Applicant in O.A. No. 748/03) has been selected illegally and arbitrarily by ignoring the merits. The authorities have failed to appreciate that the applicant is the meritorious candidate, who alone deserves appointment; respondent No. 4 was not suitable and therefore he ought not to have been appointed. The applicant had satisfied all the eligibility criteria for the post in question; merit alone was the criteria and the respondents illegally and arbitrarily ignored the said merit without any justification and reasons.

5. The aforesaid O.A. No. 1357/02 was instituted on 23.12.02 and vide order dated 26.12.2002, after hearing the applicant in person, this Tribunal observed that any action taken by the official respondents in appointing respondent No. 4 as GDSBPM shall abide by final result of this O.A.". The applicant was also directed to take immediate steps for service of notices on respondents. Since the applicant has submitted that respondent No. 4 had already been selected for the said post interim order as prayed for was not granted. When such were the facts, it appears that, Sh. Subhasis Sarkar (applicant in O.A. No. 1357/02) communicated to S.P.O. Midnapur and respondent No. 4 vide letter of the same dated that the Court had passed an order to the effect restraining the respondent authorities from allowing respondent No. 4 to join the said post.

6. Under such circumstances, Sh. Sanjoy Kumar Singh, respondent No. 4 in O.A. No. 1357/02 (applicant in O.A. No. 748/03) instituted O.A. No. 748/03. It is stated in that O.A. that after his selection, he was asked to arrange a suitable accommodation for running the said post office within 7 days vide communication dated 14.11.02. Pursuant to the same he made arrangement for a suitable accommodation, but the Inspector of Post Office, Jhargram post office vide letter dated 26.11.2002 informed him that the accommodation arranged by him was not found suitable for running the post office and he was directed to make alternative arrangement for accommodating the post office as per the guidelines of the Government. Therefore he constructed a new building in his own land for running the said post office. The construction has been completed in full and the respondents were informed about this fact. At this stage he came to know that no order restraining the official respondents from appointing the respondent No. 4 was passed by this Tribunal in O.A. No. 1357/02 and the applicant therein has deliberately misled the authorities. It is contended that the respondents authorities were legally bound to allow the applicant in O.A. 748/03 (respondent No.4 in O.A. No. 1357/02) to join the said post of GDS BPM.

7. We heard both sides and perused the pleadings carefully. A perusal of the marks obtained by the applicant in O.A. No. 1357/02 as well as the applicant in O.A. No. 748/03 would instead go to show that Subhasis Sarkar (applicant in O.A. No. 1357/02) had secured 70% marks in the Madhyamik examination while Sanjoy Kumar Sinha (Applicant in O.A. No. 748/03) had secured only 54% marks. The only reason for not selecting Subhasis Sarkar (Applicant in O.A. No. 1357/02) as noticed hereinabove was that he was owning joint property and no property was in his own name, which according to the respondents

was an essential qualification and mandatory requirement under the rules. Sanjoy Kumar Sinha, who had secured only 54% marks was selected since according to the respondents he fulfilled all the eligibility conditions. The eligibility conditions as prescribed under the requisition letter dated 16.09.2002 were that the candidate selected for the post shall have to take up his residence in the post village, if he did not belong to the post village of Akana- Nishintapur and he should be required to provide free accommodation for the post office at the post village. A further condition was that the person nominated must have adequate means of livelihood in the shape of immovable property in his own name and able to provide accommodation in the post village for the post office operation free of rent.

8. The requirement of adequate means of livelihood in the shape of immovable property has been the subject matter before a Full Bench of this Tribunal in H Lakshmana and ors v. The Superintendent of Post Office Bellary and ors (2003 (1) ATJ 277). The Full Bench after considering the matter in detail recorded the following findings:

para 18

.....

the object sought to be achieved as stated at the Bar was that the interests of the Government has to be secured but this security cannot be taken before a civil post is offered or a selection is made. That would be vitiating the principle of equality. Having adequate means has nothing to do with the merit."

*para 19

The result would be that we gave no hesitation in concluding that the condition so imposed pertaining to adequate means of livelihood in the circular of 06.12.93 must be held invalid. We hold accordingly. As a necessary consequence, the answer would be as under:-

"Possession of adequate means of livelihood in terms of Circular dated 06.12.1993 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the above said post."

A perusal of the above would show that the requirement of adequate means of livelihood in the shape of immovable property cannot be accepted by the Department of Posts and the said condition has now been completely deleted. The learned counsel for the respondents contended that at the relevant point of time when the selection was initiated in the present case i.e. September/November 2002, the Full Bench in the aforementioned case has not rendered its decision and therefore the selection process initiated then was legal and justified and as such Sanjoy Kumar Singh, who satisfies all the conditions was rightly selected. The condition of possessing adequate means of livelihood is neither an absolute condition nor a preferential condition was declared only on 02.12.2002 and therefore the Full Bench decision in the aforementioned case would have no application in the facts and circumstances of the present case.

9. We have considered this aspect and bestowed our careful consideration to the entire matter. We are unable to accept the said contention of the learned counsel for the respondents for the simple reason as held by the Apex Court in Suresh Chandra Verma v. Chancellor Nagpur University (AIR 1990 SC 2023). The relevant portion reads as under:

"Para 9

.... It is unnecessary to point out that when the Court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise."

10. We may also note that this Bench in *Gorachand Naskar v. Union of India and ors* (2004(2) ATJ 620) also considered this aspect as to whether the judgment and decision of the Full Bench would have prospective or retrospective effect and it was held that the ratio of the Full Bench Judgment would have retrospective effect.

11. It is well settled that merit alone is the criteria for appointment to the post in question. Such being the case, we noticed that Subhasis Sarkar has secured 70% marks, was the most meritorious candidate on the date of verification of GDS data and therefore he ought to have been selected in preference to Sanjoy Kumar Singh, who had secured only 54% marks. Therefore, we have no hesitation in coming to the conclusion that the selection of Sanjoy Kumar Singh as GDS BPM Akana -Nischintapur was not justified and tenable. Hence the same cannot be sustained.

12. In view of the discussion made herein above, we allow O.A. No. 1357/2002 and dismiss O.A. No. 748/2003. We further direct the respondents to appoint the most meritorious candidate to the post in question within a period of three months from the date of receipt of a copy of this order. We may note at this stage Shri Sanjoy Kumar Singh has not been appointed and allowed to run the post office in question. Ordered accordingly. No costs.

DELHI HIGH COURT

Writ Petition (C) Nos. 565, 593 and 2236 of 2004
Decided on 23.8.2004

Jainder Singh Tomar and Ors.

Petitioners

Versus

Municipal Corporation of Delhi and others

Respondents

For the Petitioners : Mr. Bhawani Shanker and Pt. Sama Singh, Advocates.

For the Respondents : Mr. Vinay Sabharwal and Ms. R. Veena, Advocates.

PRESENT

The Hon'ble Mr. Justice Manmohan Sarin

Disciplinary Proceedings—Charge of accepting illegal gratification—Criminal proceedings initiated under the Prevention of Corruption Act are likely to be delayed—Whether it is justified to stay the disciplinary proceedings till the conclusion of criminal case—No

Cases Referred :

1. Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 2 JT 456.
2. Tarlok Singh v. MCD (W.P. (C) No. 4926/2003), decided on 8-4-2004.

ORDER

Manmohan Sarin, J.—By this common judgment, I would be deciding the above three writ petitions as same question of law and almost similar question of fact arise.

2. Petitioners in the writ petitions are seeking stay of the departmental proceedings initiated against them during the pendency of the criminal cases registered against them.

3. Let us notice the individual facts in the three writ petitions to the extent they are relevant :

(i) Jainder Singh Tomar, petitioner in WP (C) 565/2004 had joined the MCD on daily wages in 1980. He was regularised in the post of Mali w.e.f. 1-4-1988. In January, 200, petitioner was deputed to the Toll Tax Department of MCD.

(ii) Rajinder Prasad Yadav, petitioner in W.P. (C) 593/2004 had similarly joined the MCD in May, 1989 on daily wages and was regularised in the post of Mali w.e.f. 1-4-1995. He was also deputed to Toll Tax Department in January, 2000.

(iii) A criminal case has been registered against both the petitioners vide FIR No. 64/2000 dated 20-12-2000 under Section 13(1)(d) of Prevention of Corruption Act, 1988 read with Section 120-B IPC at Anti Corruption Branch. As per the charge- sheet, on 20-12-2000, both the petitioners were detailed on Toll Tax duty at Kapashere Border. They allegedly permitted the entry of the vehicles from the border of other States without receiving full amount of toll tax. It is urged that less money than the prescribed toll tax was collected without issuing any receipt. A raid was organised. Petitioner Rajinder Prasad Yadav and other employee was sitting at Booth No. 1 respectively. It is alleged that money so collected by the petitioners was kept with the Tea Vendor near the toll tax booth.

(iv) Based on the above allegations and after investigations, offences under Section 13(1)(d) of Prevention of Corruption Act, 1988 read with Section 120-B IPC have been registered against both the petitioners. The incident is of 20- 12-2000. Charge-sheet has been supplied to the petitioners and the matter had been adjourned from time to time and the case was last fixed for 31st July, 2004 for framing of charges.

(v) It appears that Addl. Sessions Judge took the view that action had been taken against bribe takers but no action had been taken only against bribe givers. Accordingly, he directed that action be taken against bribe givers in accordance with law. Therefore summoning of bribe givers would take further time and as a result, criminal trial is likely to be delayed in both the cases. Respondent-Corporation commenced departmental proceedings on 23-9-2003, issued memo to the petitioners along with statements of charges, statement of allegations, list of documents and list of witnesses through Vigilance Department to proceed with departmental action against the petitioners.

4. Ved Prakash, petitioner in W.P. (C) No. 2236/2004 joined MCD as a belder on 1-4-1989 on permanent basis. He was also posted at Rajokri toll tax booth, TTC. For a similar incident, FIR No. 62/2000 dated 20-10-2000 under Section 7/13 read with Section 13(1)(d) of Prevention of Corruption Act, 1988 was registered against him. He was arrested and placed under suspension vide Officer Order No. 1469/SIO(P) Vig/2001/2052 dated 30-4-2001. The charge-sheet for offences under the Prevention of Corruption Act, 1988 was filed on 12-8-2002 and petitioner had appeared before the trial court. The case had been fixed for framing of charges on 9-3-2004. On 25-9-2003, petitioner

केन्द्रीय प्रशासनिक अदान्वरण
Central Administrative Tribunal

23 MARCH

গুৱাহাটী ন্যায়বোঠ
IN THE ~~Guwahati Bench~~ CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

IN THE MATTER OF

O.A.NO.204 of 2005

Shri Anup Mishra

: Applicant

- VS -

Union of India & Others

: Respondents

- AND -

IN THE MATTER OF :

Written statement submitted by the Respondent
Nos.1 to 5.

WRITTEN STATEMENT :

The humble answering Respondents submit their
written statements as follows:

BRIEF HISTORY

This history may be treated as an integral part
of the written statement ["] appended below.

Shri Apurba Mishra, the Ex-BPM of Lalpani EDBO
was retired from service on superannuation on 01.03.2008.
Thereafter, the post of BPM, Lalpani EDBO had fallen vacant
and the EDDA of the office was ordered to look after the

Sub. No. Ans. on
Recd. Date
Cachet No. SEC 01
Serial No. 1000
Fees
Central Admin. Trib.

work of BPM. Later on an advertisement was made for regular appointment against the vacant post vide SSP0s, Cachar Division, Silchar letter No.416 dated 31.01.2003 through the employment Exchange, Hailakandi. The said post was kept reserved for the OBC quota and the selection has to be made from the OBC cadre. But the Employment Exchange, Hailakandi could not sponsor the name of required no. of OBC candidate against the above noted advertisement and replied vide his No.VII-6(A)/2003 - 361 dated 24.04.2003 that as no application was received for the post in question from the candidates fulfilling the criteria, particular, as asked for, could not be forwarded from their end. And accordingly re-notification was issued through Employment Exchange vide SSP0s, Cachar Division, Silchar letter No.A-416 dated 16.06.2003 with condition that the post is reserved for OBC but made open to other community if required number of OBC candidates are not available. Receiving no response from the Employment Exchange, Hailakandi against the re-notification 11 (eleven) applications were received for the said post from direct channel and those applications were entertained. Out of 11 (eleven) applications, 8 (eight) applications were from OBC candidates. Out of 8 (eight) applications received from OBC candidates, OBC certificates produced by 4 applicants are not found genuine and 2 (two) applicants passed HSLC Examination as compartmental. As such, selection was made from the rest two OBC candidates and accordingly Shri Soumitra Nath has been selected for the said post observing all formalities.

9
Resuming work
Cachar
SSP0s

1.(a) That I am Senior, Subst. Ct. Post ofc.

Casher, DMR Silchar

Respondent No. 3 in the above case. I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement, the contentions and statements made in the application may be deemed to have been denied. I am competent and authorized to file the written statement on behalf of all the Respondents.

(b) The application is filed unjust and unsustainable both on facts and in law.

(c) That the application is bad for non-joinder of necessary parties and misjoinder of unnecessary parties.

(d) That the application is also hit by the principles of waiver estoppel and acquiescence and liable to be dismissed.

(e) That any action taken by the Respondents was not ~~stigmatic~~ and some were for the sake of public interest and official procedures and it cannot be said that the decision taken by the Respondents against the applicant had suffered from the vice of illegality.

Resoning, K. Murali
Counsel

PARAWISE COMMENTS

2. That with regard to the statements made in paragraphs 1, 2, 3, 4.1 and 4.2 of the application, the answering respondents do not admit anything except those which are in record and that the applicant is put to the strictest proof thereof.

3. That with regard to the statements made in paragraphs 4.3 of the application, the answering respondents beg to submit that, Shri Apurba Mishra, father of the applicant retired from the department as GDS Branch Post Master (in short GDS BPM), Lalpani B.O. on superannuation on 01.03.2002. As a result, the post of GDS BPM had fallen vacant and the EDDA of the office (Lalpani B.O.) ordered to look after the work of the GDS BPM. As per rule, the person selected for the post of GDS BPM must be able to provide space to serve the agency premise for postal operation (Business premises such as shops etc may be preferred). So Shri Apurba Kumar Mishra, father of the applicant offered space at his residence so long he was in service.

4. That with regard to the statements made in paragraph 4.4 of the application, the answering respondents beg to state that as per Rule 7 of GDS (Conduct and Employment) Rule 2001 GDS officials are entitled to avail leave, as may be determined by the Government, from time to

Viswanay K. Mandale
P.C.A.

time. During leave GDS officials should arrange substitute, in his full risk and responsibility, to carry out his work. The substitute provided in leave period cannot have any claim for future absorption in the post as per GDS Rule 2001.

A photocopy of the GDS Rule 2001 is annexed herewith as Annexure-A.

It is to mention here that the applicant was provided to work as substitute during the leave period of his father (Ex-GDS BPM LALPANI BO) as per GDS Rule 2001. It is common ground that the said Rules governing the recruitment of GDS do not provide for any weightage for the service as substitute. Thus the prayer of the applicant to the post of BPM Lalpani BO after retirement of his father was not accepted.

It is pertinent to mention here that as stated by the applicant in the O.A. for the appointment to the post of BPM Lalpani BO on compassionate ground does not arise as his father was retired from service on superannuation. Appointment on compassionate ground arises whenever any GDS official dies while on duty.

5. That with regard to the statements made in paragraphs 4.5 of the application, the answering respondents beg to state that on superannuation of Shri Apurba Kumar Mishra, the father of the applicant, the post

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Sasmita K. Mohanty
Cach

of GDS BPM, Lalpani BO had fallen vacant w.e.f. 02.03.2002. An advertisement was made for regular appointment against the vacant post of GDS BPM vide SSP0s, Cachar Division, Silchar letter No.416 dated 31.01.2003 through the Employment Exchange, Hailakandi. It is to mention here that the said post was reserved for OBC candidates only and selection has to be made from the candidates belonging to OBC caste for which the applicant's application was not processed.

6. That with regard to the statements made in paragraph 4.6 of the application, the answering respondents beg to submit that the Employment Exchange, Hailakandi could not sponsor required number of OBC candidates in response to SSP0s, Cachar Division, Silchar advertisement No.416 dated 31.01.2003 and replied vide his no.VII-6 (A)/2003 351 dated 24.04.2003 that as no application was received for the post in question from Employment Exchange/Hailakandi. As such, a re-notification was issued through the Employment Exchange vide SSP0s, Cachar Division, Silchar letter No.A-416 dated 16.06.2003 with condition that the post is reserved for OBC candidates but made open for other community if required number of application from OBC candidates is not receive. Receiving no response against the re-notification from Employment Exchange, Hailakandi, 11 (eleven) applications including OBC & OC were received for the post from open marked by issuing local notice.

Resolving K Mandi
Cachar
2001

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7. That with regard to the statements made in paragraph 4.7 of the application, the answering respondents beg to state that the letter dated 18.10.04 was issued to all the applicants to attend Manipur Bagan Sub Post Office with all original certificates/documents, which were enclosed with the application, for verification by Inspector of POs on 27.10.2004. It is to mention that the letter dated 18.10.2004 issued for verification of documents but not meant for any interview.

8. That with regard to the statements made in paragraph 4.8 of the application, the answering respondents beg to state that the statement made by the applicant is not correct as there were eleven applications including OBC & OC candidates obtained from direct channel and these were entertained. Out of 11 (eleven) applications, 8 (eight) numbers were OBC candidates. On examining the application and documents, OBC certificates produced by 4 (four) were found not genuine and 2 (two) applicants belonging to OBC caste passed HSLC examination as compartmental. And the selection for the post was made from the rest 2 (two) OBC candidates.

9. That with regard to the statements made in paragraph 4.9 of the application, the answering respondents beg to state that receiving no response against the re-notification from Employment Exchange, Hailakandi, 11

(eleven) applications including OBC & OC were received for the post from open market and these applications were entertained, out of which 8 (eight) numbers were OBC candidates. Out of the 8 (eight) applicants, the OBC certificates produced by 4 (four) are found not genuine and 2 (two) applicants passed HSLC examination as compartmental. And the selection for the post was made from the rest 2 (two) OBC candidates. Shri Saumitra Nath was a candidate amongst the 11 (eleven) applicants as stated in para above and he belongs to OBC caste and the caste certificate produced by him was found genuine and accordingly Shri Saumitra Nath was selected for the post observing all formalities. It is to be mentioned here that the post of BPM Lalpani B.O was reserved to OBC candidates and was not done on extraneous considerations or through unfair and illegal means.

R-5

10. Since Shri Saumitra Nath was selected for the post of GDS BPM, Lalpani B.O. He shifted the post office at his own arrangement as discussed in para 4.3 so the department did not find any violation of rules of GDS BPM.

11. That with regard to the statements made in paragraph 4.11 of the application, the answering respondents beg to state that after receiving complaint against Shri Nath necessary inquiry had been made and it observed that Shri Nath had previously worked as agent in

Visweswariah K. Hande
Cachar

Sahara India Ltd. Copy of inquiry report is endorsed herewith as Annexure B.

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Resoning K. Lohade
Cecilia

12. That with regard to the statements made in paragraph 4.12 of the application, the answering respondents beg to state that the same has been answered/replied in paragraph 4 of this written statement.

13. That with regard to the statements made in paragraphs 4.13 and 4.14 of the application, the answering respondents beg to submit that, since the post of GDS BPM, Lalpani BO was reserved for OBC Caste and applications from the OBC community were available preference to that community was considered. It is pertinent to mention that Shri Saumitra Nath who was selected for the post of GDS BPM, Lalpani BO belongs to OBC community.

There is no any denial of justice as the applicant belongs to OC community and the post was reserved for OBC. Accordingly OBC candidate had been selected for the post of GDS BPM, Lalpani BO.

14. That with regard to the statements made in paragraphs 4.15, 4.16, 5.1, 5.6, 5.7, 6, 7, 8.4, 9 and 9.1 of the application, the answering respondents most respectfully beg to submit that all are devoid of any merit and without any rational foundation and not tenable in the eye of law, hence the respondents do not admit anything

except those which are in record and the applicant is put to the strictest proof thereof.

Resoning K. Hanle
Cach

15. That with regard to the statements made in paragraphs 5.2, 5.3, 5.4 and 5.5, the answering respondents beg to state that, as per departmental rule the person selected for the post of GDS BPM must be able to offer space to serve the agency premises for the postal operation. Accordingly Lalpani BO was functioning in the house of applicant's father till his retirement on superannuation on 01.03.2002.

The applicant might have been nominated by his father as per departmental rule. As stated above he cannot claim for absorption.

Since the father of the applicant retired on superannuation and still alive, the question of appointment to the applicant on compassionate ground does not arise.

The post of GDS BPM, Lalpani BO was reserved for OBC community and accordingly a candidate belonging to OBC candidate has been selected.

16. That with regard to the statements made in paragraphs 8.1, 8.2 and 8.3 of the application, the answering respondents beg to state that Shri Saumitra Nath

was appointed in the vacant post of GDS BPM, Lalpani BO observing all departmental formalities.

Since the vacant post of GDS BPM, Lalpani BO has been filled up observing all departmental rules and formalities so the question of appointment of the applicant against the post does not arise as the post was exclusively reserved for OBC candidate.

In view of the above the relief sought by the applicant cannot be considered at all and the application should be dismissed with cost.

17. That this written statement is made bonafide and for the ends of justice and equity.

Under the above circumstances your Lordship would be pleased to dismiss the application filed by the applicant for the ends of justice.

Resoning K. Mandale
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VERIFICATION

I, Shri. Baisonsingh K. Marak)

Sr. Subd. & P.R. Officer, Cachar P.D. do hereby solemnly affirm and verify that the statements made hereinabove are true to my knowledge, belief and information and nothing is being suppressed.

I sign this Verification on this the 4th -
day of February 2006 at Guwahati.

Baisonsingh K. Marak
Senior Subd. & P.R. Officer,
Cachar Division : Silchar-187005

SWAMY'S - POSTAL GRAMIN DAIRY

action for the grant of *ex gratia* gratuity/Severance Amount, etc., had been initiated for want of a formal application from the concerned Gramin Sevak.

3. It has been decided that it should be made mandatory for the Appointing Authority to intimate the Gramin Dak Sevak before the date of his discharge from employment in writing that he is required to apply for payment of *ex gratia* gratuity/Severance Amount, etc., due to him and also obtain an application at the appropriate time from him and process the case well in advance so that *ex gratia* gratuity/Severance Amount, etc., can be sanctioned by the time Gramin Dak Sevak actually discharges from employment. Appointing Authorities should, therefore, ensure that a proper watch is kept on all potential claim cases and action is intimated expeditiously at the appropriate time.

[D.G., Posts, Cir. Lr. No. 18-44/2001-GDS, dated the 5th December, 2001.]

7. Leave

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

Provided that—

- (a) where a Sevak fails to resume duty on the expiry of the maximum period of leave admissible and granted to him, or
- (b) where such a Sevak 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 10.

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 shall be no provision of carry forward or encashment of this leave. This will be implemented with effect from half year beginning from 1st July 1998.

[D.G., Posts, O.M. No. 26-1/97-PC & ED Cell dated the 17th December, 1998. Page 2 of 2]

(2) **Granting of leave to ED Agents and appointment of substitutes.**—A reference is invited to Rule 5 of the ED Agents (Conduct and Service) Rules, 1964, according to which the employees shall be entitled to such leave as may be determined from time to time. In accordance with this provision, Government of India have decided that leave for ED Agents should be regulated as below—

(1) The expression "leave" as applied to ED Agents means "period during which with the approval of the Appointing Authority, an ED Agent is permitted not to attend personally to the duties assigned to

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him, provided that in case the Appointing Authority, on behalf, by the concerned authority, exceeds 60 days".

An Inspector of Post Offices for a period not exceeding three years. Authority is the Superintendent.

- (2) During leave, every ED carried on by a substitut authority competent to s be obtained in writing.
- (3) The allowance normall leave, be paid to the app
- (4) No ED Agent should be 90 days at a stretch whi exceptional circumstanc Offices. The maximum f an ED Agent in a singl absence in excess of 180 only in cases where the officiating in a departm delegated powers to san account of genuine illne
- (5) If an ED Agent remain stretch, he will be liable EDAs (Service and Com
- (6) Leave shall not ordinari intervals. If an ED Age intervals for a total per year, he shall cease to be

2. Application form is to be obtained on leave and after the application, one copy should be sent to the substitute, the third copy to the file of the sanctioning authority, Drawing Officer (Head Postmaster) and the fourth copy to the ED Agent.

I.D.G., P. & T., General Circular No. 43/63/69-Pen., dated the 27th May, 1970; D.G., Posts, Letter No. 12-107/88/EDC & 338/89-ED & Trg., dated the 14th February.

* See Instruction (2) below Rule 63, beyond the maximum permissible period of

him, provided that in cases where a Superintendent of Post Offices is the Appointing Authority, such approval may be accorded on his behalf, by the concerned Inspector of Post Offices for a period not exceeding 60 days".

An Inspector of Post Offices will be competent to sanction leave for a period not exceeding 60 days in cases where the Appointing Authority is the Superintendent.

- (2) During leave, every ED Agent should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him. Such approval should be obtained in writing.
- (3) The allowance normally payable to an ED Agent shall, during leave, be paid to the approved substitute provided by him.
- (4) No ED Agent should be permitted leave of absence for more than 90 days at a stretch which may be extended up to 180 days in exceptional circumstances by the Divisional Superintendent of Post Offices. The maximum period of leave which may be sanctioned to an ED Agent in a single stretch shall not exceed 180 days. Leave of absence in excess of 180 days may be granted by Heads of Circles* only in cases where the necessity for leave arises due to ED Agent officiating in a departmental post. The Heads of Circles have been delegated powers to sanction leave to EDAs beyond 180 days on account of genuine illness (effective 12-9-1988).
- (5) If an ED Agent remains on leave for more than 180 days at a stretch, he will be liable to be proceeded against under Rule 8 of EDAs (Service and Conduct) Rules, 1964.
- (6) Leave shall not ordinarily be availed by an ED Agent at frequent intervals. If an ED Agent is found to have taken leave at frequent intervals for a total period of 180 days or more in a period of one year, he shall cease to be an ED Agent.

2. Application form is to be obtained in quadruplicate from the ED Agent proceeding on leave and after the sanctioning authority has passed the orders on the application, one copy should be handed over to the ED Agent and another to the substitute, the third copy being retained as the office copy for the file of the sanctioning authority. A copy should be given to the concerned Drawing Officer (Head Postmaster) for drawing the allowances to the substitute provided by the ED Agent.

[D.G., P. & T., General Circular No. 23, dated the 24th February, 1970 and Letters No. 43/63/69-Pen., dated the 27th May, 1970; No. 5-5-72-ED Cell, dated the 18th August, 1973; D.G., Posts, Letter No. 12-107/88/EDC & Trg., dated the 12th September, 1988; and No. 17-338/89-ED & Trg., dated the 14th February, 1991.]

* See Instruction (2) below Rule 6 delegating the power to condone period of absence beyond the maximum permissible period of leave, to the Director of Postal Services.

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In cases where Ex-Territorial Army personnel or Ex-Army Reservists who are working as ED Agents are called for active field service and there is no possibility of their release to rejoin the ED posts in the near future, the provisions contained in Para. 1 (6) that, if an ED Agent remains on leave for more than 180 days in a year he ceases to be an ED Agent, are not applicable.

[D.G., P & T., Letter No. 43/38/72-Per., dated the 24th April, 1972.]

**APPLICATION FOR LEAVE FOR
EXTRA-DEPARTMENTAL AGENTS**

(To be filled in quadruplicate)

1. Name
2. Designation
3. Period for which leave is required
4. Date from which leave is required
5. Full address while on leave
6. Name, age and address of the substitute
7. Specimen signature of the substitute

I hereby propose Shri whose particulars are given above to work as my substitute during my leave on my responsibility according to the terms of the security bond executed by me.

A charge report signed by myself and by my nominee will be submitted as prescribed in

Rule 50 of Rules for Branch Offices

Rules 45 and 46 of P & T Manual, Volume-IV

Necessary approval may kindly be accorded to this arrangement.

Station:

Date:

Signature of Extra-Departmental Agent

(For use of the Sanctioning Authority)

Shri (designation) B.O./S.O
Division has been permitted to proceed on leave for
days from

The appointment of Shri as his substitute is approved on the clear understanding that the substitute may be discharged by the Appointing Authority at any time without assigning any reason.

Date:

Signature of the Sanctioning Authority

To

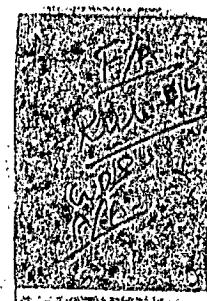
- (1) Shri ED Agent
- (2) Shri (Substitute)

(3) Clarifications.—
to ED Agents, it was kept Superintendents to look Directorate is in receipt even writ petitions from from the subordinate authority leave the control of the cases, even to Overseers, of embarrassment to the or laid down in rules. It is issued in regard to leave certain duties to be performed. The points raised in the execution of the orders may

2. Leave to be sanctioned.—
in regard to the powers of the Manual, Vol. VIII, to sanction of ED Branch Postmaster, the Divisional Superintendent issued, the Divisional Superintendents. In respect of other appointing authorities who the intention is that, as superintendents, should apply in advance. In rare cases of sanction, the Inspectors should immediately forward the documents, who will then so decided to grant gratuity records properly and the issued by the appointing

3. Approval of the leave.—
At present, it is up to the Agent himself. In most cases, factorily. There are, however, later claim regular appointment when required.

It is provided in the that approved by the appointing be any elaborate procedure cases where leave is not upon prior approval of the excluded from making such considered necessary and it is found that the one ac



GDS (CONDUCT AND EMPLOYMENT) RULES

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(3) **Clarifications.**— In framing these instructions for the grant of leave to ED Agents, it was kept in mind that there is greater need for the Divisional Superintendents to look into the affairs of the ED Agents than at present. The Directorate is in receipt of a large number of representations, suit notices and even writ petitions from ED Agents and the reports received in such cases from the subordinate authorities show that in general there is a tendency to leave the control of the work of ED Agents mainly to Inspectors or in some cases, even to Overseers. The Inspectors and Overseers quite often cause a lot of embarrassment to the department by acting in a manner not contemplated or laid down in rules. It is for this reason that in the instructions that have been issued in regard to leave for ED Agents, we have specifically provided for certain duties to be performed by the Divisional Superintendents personally. The points raised in the various communications from the Circles for clarification of the orders may now be examined.

2. *Leave to be sanctioned by appointing authorities.*—The first point is in regard to the powers possessed by Inspectors under Rule 261 of the P & T Manual, Vol. VIII, to sanction leave to ED Agents up to 4 months. In respect of ED Branch Postmasters and Sub-Postmasters, the appointing authorities are the Divisional Superintendents and according to the orders that we have now issued, the Divisional Superintendents will have to sanction leave to ED Postmasters. In respect of other classes of ED Agents, the Inspectors being the appointing authorities will continue to sanction leave. We may explain that the intention is that, as far as possible, the ED Agents, including the Postmasters, should apply in advance for leave and get the leave sanctioned in advance. In rare cases where it is not practicable to obtain such advance sanction, the Inspectors may authorize the Postmasters to go on leave but they should immediately forward the applications to the Divisional Superintendents, who will then formally issue leave memos. Since it has now been decided to grant gratuities to ED Agents, it is necessary to maintain the records properly and therefore, formal sanctions for leave will have to be issued by the appointing authorities.

3. *Approval of the substitutes in place of ED Agents proceeding on leave.*— At present, it appears that the choice of the substitute is left to the ED Agent himself. In most cases, this arrangement appears to have worked satisfactorily. There are, however, a few cases, where the substitutes appointed, later claim regular appointment as ED Agents and are not prepared to quit when required.

It is provided in the latest instructions that the substitutes should be approved by the appointing authorities. It is not the intention that there should be any elaborate procedure to be followed for according such approval. In cases where leave is not got sanctioned in advance, we may not even insist upon prior approval of the substitute but the Department should not be precluded from making such inquiries into the antecedents of the substitutes as considered necessary and to ask an ED Agent to provide another substitute, if it is found that the one actually proposed by the ED Agent is not acceptable.

It will be a good working arrangement, if substitutes nominated by the ED Agent are approved in advance by the competent authority so that, there may be no difficulty in granting leave of absence at a short notice in cases of illness or any unforeseen circumstances affecting the ED Agent.

The order sanctioning leave should also specifically convey the approval of the appointing authority to the substitute working in place of the ED Agent on leave and should also make it clear that the substitute may be discharged by the Appointing Authority at any time without assigning any reasons. It is also necessary for the Appointing Authority to ensure that such a substitute is not allowed to work indefinitely. If the absence from duty of the regular ED Agent is likely to last indefinitely, the Appointing Authority should take immediate steps to make a regular appointment and the person so appointed need not necessarily be the substitute.

4. Arrangement in the place of an ED Agent appointed to regular departmental post.—The next point that has to be considered is about the arrangement for carrying on the work of an ED Agent who takes leave when he is appointed against a regular post (departmental) such as Postman, Packer, etc. In such cases, it would not be correct for the EDA to be considered as being on leave. If the vacancy in the regular post against which he is appointed is for a short duration, only then he may provide his own substitute, subject to the same conditions as in the case of an ED Agent proceeding on leave. If, however, the EDA is appointed to a regular departmental post for an indefinite period and there is no likelihood of his returning as ED Agent, then the Appointing Authority should make arrangements to fill up the post of ED Agent in the normal manner by calling for cases. It should be made clear that the arrangement will continue only so long as the person originally working as ED Agent and now working as Packer, Postman, etc., is not regularly appointed to the departmental post. When the ED Agent is regularly appointed as Packer, etc., the position will be subject to review.

5. How to compute the period of one year.—The doubt raised here is, whether it should be calendar year or financial year. It should refer to any continuous period of 12 months. The said continuous period of 12 months should be reckoned from the beginning of any stretch of leave taken by an ED Agent previous to the stretch of leave under consideration. If, during the period of 12 months computed as above, an ED Agent had been absent for more than 180 days, he is to be removed from service after following the procedure laid down in Rule 8.

6. Procedure to be followed for terminating the services of an ED Agent who takes leave frequently or for more than 180 days at a stretch.—In view of the revision of Rule 8, following the Supreme Court's judgment of 22nd April, 1977, it is no more possible to remove an ED Agent on the ground of absence beyond the maximum permissible period of leave of 180 days at a stretch without taking disciplinary action against him.

7. Whether the substitutes should furnish security.—The answer to this would be in the negative. When applying for leave in the prescribed form, the

ED Agent under the security bond responsible for the necessary to get an

[D.O., P. & T., dated the 18th April, 4/77-Disc. II, dated 1981.]

8. Provision for regular departmental post.—The ED Agent is appointed as Packer, etc., and the substitute subject proceeding on leave returning as ED arrangements to fill for applications. When has to be made clear that person originally working as Packer, etc., is not regularly appointed to the original ED Agent post, he will automatically service as ED Agent *gratia* gratuity after 'D' or Postman, etc., on leave for more than 180 days are not applicable i

[D.O., P. & T., L.C.]

(4) Responsibility of his substitute.—What action should be taken in the event of his substitute committing any offence in detail in consultation with each of this Office of Law and their Utheir advice is repre

2. As regards the removal of ED Agents.—This will be examined further in

[D.O., P. & T., L.C.]

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In this case, the permanent EDBPM

GDS (CONDUCT AND EMPLOYMENT) RULES

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ED Agent undertakes to be responsible for the work of the substitute. Besides, the security bond furnished by him also makes it clear that he would be responsible for the actions of the substitute. In these circumstances, it is not necessary to get any security from the substitutes.

[D.G., P. & T., Letter No. 43/15/65-Pen., dated the 31st March, 1969; No. 5-5-72 ED Cell, dated the 18th April, 1972; No. 43-146/70-Pen./Disc. II, dated the 13th January, 1972; No. 151/4/77-Disc. II, dated the 10th May, 1977; and No. 43-158/81-Pen., dated the 3rd September, 1981.]

8. Provisional appointment of substitute till absorption of ED Agent in regular departmental post.—In Para. 4 above, it was made clear that if an ED Agent is appointed against a regular post (departmental) such as Postman, Packer, etc., and the vacancy is of a short duration, he may provide his own substitute subject to the same conditions as in the case of ED Agent proceeding on leave. If, however, an ED Agent is appointed to a regular departmental post for an indefinite period and there is no likelihood of his returning as ED Agent, then the Appointing Authority should make arrangements to fill up the post of ED Agent in the normal manner by calling for applications. When appointment of ED Agents are made in such cases, it has to be made clear that the arrangement will continue only so long as the person originally working as ED Agent and now working as Packer, Postman, etc., is not regularly appointed to the departmental post and when he is regularly appointed as Packer, etc., the position will be reviewed. In case the original ED Agent has to revert back for want of vacancy in the departmental post, he will automatically get back his job as ED Agent and his previous service as ED Agent will be taken into account for considering his title to *ex gratia* gratuity after condoning his absence for the period he worked as Group 'D' or Postman, etc. The provisions of Para. 1 (5) that if an ED Agent remains on leave for more than 180 days at a stretch he shall cease to be an ED Agent, are not applicable in such cases.

[D.G., P. & T., Letter No. 43/34/71-Pen., dated the 20th March, 1971.]

(4) Responsibility of permanent ED Agent for irregularities committed by his substitute.—Clarifications were requested by some circles as to what action should be taken against a permanent ED Agent for the irregularities committed by his substitute during leave. The matter was examined in detail in consultation with the Ministry of Law. In this connection, a copy each of this Office U.O. No. 43-13/70-Pen., dated 29-7-1970, to the Ministry of Law and their U.O. No. 14280/70-Adv. (A), dated 1-9-1970, containing their advice is reproduced below for information and guidance.

2. As regards Para. 3 of the Law Ministry's Note, the matter will be examined further in this office.

[D.G., P. & T., Letter No. 43-13/70-Pen., dated the 11th November, 1970.]

Copy of U.O. No. 43-13/70-Pen., dated 29-7-1970

In this case, we are dealing with the extent of responsibility of the permanent EDBPM for the irregularities committed by his nominee during

leave. Notes on pages 3-7/N will recall the case. A specimen copy of the security bond form executed by ED Agents is placed below at pages 18-20/c which may please be perused. Whenever an ED Agent proceeds on leave, a substitute is provided by him who works in his place on the responsibility of the permanent ED Agent. The question arises as to what extent the original incumbent may be held liable for the defaults of the substitute provided by him. In this connection, the judgment delivered by the Sub-Divisional Magistrate, Dindigul, may please be perused, at page 7/c. In that case, it has been held that the nominee, while discharging the duties of a public servant, remains a private agent of the permanent Branch Postmaster, and no prosecution would lie against him for criminal breach of trust under Section 409, Indian Penal Code. Thus, it becomes quite necessary to recover the losses suffered by the Department in such cases, from the original ED Agent who offered the substitute to work on his responsibility. Ministry of Law may kindly see and advise on the following points:—

- (a) Whether the losses suffered by the Department due to the defaults of the substitute may be recovered from the original ED Agent who offered the substitute to work on his responsibility;
- (b) Whether any of the punishments mentioned in Rule 7 of P & T ED Agents (Conduct and Service) Rules, 1964, may be inflicted on the permanent ED Agent for the defaults of his substitute;
- (c) Whether the judgment delivered by the Sub-Divisional Magistrate can be contested successfully in Higher Courts.

U.O., No. 14280/70-Adv. (A), dated 31-8-1970

The ED Agent has in his application for leave agreed that his substitute will work on the responsibility of the ED Agent during the absence on leave of the latter according to the terms of the security bond executed by the ED Agent. Consequently, the substitute becomes an agent of the ED Agent in so far as the postal authorities are concerned and the ED Agent as the principal nominee.

2. The postal authorities may bring in a civil action against the ED Agent for the losses arising out of the tortious action of the nominee of the ED Agent.

3. As correctly pointed out by Shri, the present form of the surety bond does not make the surety liable to indemnify the postal authorities for losses occasioned by the defaults of the nominee of the ED Agent. Since the ED Agent has undertaken to hold himself liable for the acts of his nominee, no such contractual liability has been undertaken by the surety. Consequently, if it is intended that the surety should be liable not only for the acts of the ED Agent, but also for those of his nominee, the bond will have to be suitably amended in consultation with our Conveyancing Section.

4. It will be under Section 406 unless it can nominate to commit against the ED Agent be "imposed for penalize an ED Agent that the nominee reason. All the same not taken reasonable antecedents of the commit the tort, departmentally. N the facts and circumstances.

5. Answers to

- (a) Yes, by
- (b) No, unless
- (c) No.

(5) Divisional Superintendent in certain cases, permitted leave of absence in excess of 30 days in case of officiating in a Departmental function, the ED Agents in excess of 30 days.

2. References to experience shows that in such cases without allowance in the salaries of Group 'D' Postal Services. Since at present, power is given to the Director of Posts to fix the number of days in such cases are in considerable delay in settling the claims of Postal Services in such cases, suggested by the Director of Posts which will quiet the minds of the concerned officers, etc.

3. The above suggestion Having regard to all the circumstances, the service unions for exp

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4. It will not be possible to prosecute the ED Agent in a Criminal Court under Section 409, Indian Penal Code, for the offence committed by his nominee unless it can be established that the ED Agent had conspired with his nominee to commit the offence. Same is true of taking disciplinary action against the ED Agent for the fault of his nominee. Undoubtedly, a penalty can be "imposed for good and sufficient reasons" and in order to successfully penalize an ED Agent for the acts of his nominee, a simple proof of the fact that the nominee misbehaved may not be considered as a good and sufficient reason. All the same, if the Department is able to prove that the ED Agent had not taken reasonable care in appointing his nominee, had failed to verify the antecedents of the nominee or by his negligence had permitted the nominee to commit the tort, it would be possible to proceed against the ED Agent departmentally. Needless to say, the decision in this regard will depend upon the facts and circumstances of each individual case.

5. Answers to questions raised are given *ad seriatim*.

- (a) Yes, by a Civil Suit.
- (b) No, unless circumstances indicated above also exist.
- (c) No.

(Sd.) V.V. Vaze
Addl. Legal Adviser

(5) **Divisional Heads may sanction leave in excess of 180 days in certain cases.**—The instructions in force at present, no ED Agent can be permitted leave of absence for more than 90 days at a stretch. In exceptional circumstances, leave of absence can be extended up to 180 days by the Divisional Superintendents. According to the existing instructions, leave of absence in excess of 180 days can be granted by the Director of Postal Services only in cases where the necessity for leave arises due to an ED Agent officiating in a Departmental Post. The Heads of Circles can sanction leave to the ED Agents in excess of 180 days on account of genuine illness.

2. References have been received from certain quarters stating that past experience shows that in most of the cases, the ED Agents avail of leave without allowance in excess of 180 days only to officiate in the leave vacancies of Group 'D'/Postman cadres due to the ban on employment of outsiders. Since at present, powers to grant Leave Without Allowance in excess of 180 days in such cases are exercised by the Director of Postal Services, this results in considerable delay. Since no discretion is now exercised by the Director of Postal Services in sanctioning Leave Without Allowance exceeding 180 days in such cases, suggestion has been made that the powers which are now exercised by the Director of Postal Services may be delegated to the Divisional Heads which will quicken the pace of issue of sanction, settlement of gratuity cases, etc.

3. The above suggestion has been examined in this office carefully. Having regard to all relevant factors including pressing demands from the service unions for expeditious settlement of *ex gratia* cases, etc., it has been

decided that power of sanction of Leave Without Allowance in excess of 180 days taken to officiate in the leave vacancy of Group 'D' Postman cadres by the ED Agents, will now be exercised by the Divisional Heads instead of the Director of Postal Services as at present. However, the power to condone the absence in excess of 180 days on genuine illness grounds will continue to be exercised by the same authority as hitherto before. While exercising the powers now delegated to the Divisional Heads, they will ensure that such officiating arrangements of ED Agents in Group 'D' Postman cadres for periods exceeding 180 days are allowed to continue in exceptional circumstances only and not as a matter of rule. This is essential as during such long uninterrupted officiating arrangements, the regular incumbents of the posts of ED Agents are required to provide their substitutes and if such arrangement is allowed to continue for periods exceeding 180 days as a matter of rule, this will legitimize the claims of all the ED substitutes for regularization of their services as ED Agents thereby creating lot of administrative problems. It has to be ensured that the powers now delegated are exercised judiciously with full sense of responsibility.

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

5. The contents of this letter may kindly be brought to the notice of all concerned for compliance/guidance.

[D.G., Posts, Letter No. 18-34/92-ED & Trg., dated the 25th November, 1993.]

(6) Guidelines for regulating substitute/provisional arrangements made in place of regular Gramin Dak Sevaks.— References are received from Circles for regularizing the employment of substitutes provided by regular GDSs during their periods of leave/absence on the ground that they have been functioning in that capacity "for a longer period". A number of cases also stand filed in the Tribunals and Courts on this issue. Apparently, instructions issued from time to time are not followed rationally by competent authorities in allowing substitutes to continue indefinitely or for long periods.

2. In this context, I am directed to draw your attention to the DG (Posts)'s instructions given below Rule 5 of the P & T ED Agents (Conduct & Service) Rules, 1964 corresponding to Rule 7 of the Gramin Dak Sevaks (Conduct & Employment) Rules, 2001 which *inter alia*, stipulate the following:

"During leave, every GDS should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him. Such approval should be obtained in writing" and that:

"It is necessary for the appointing authority to ensure that such a substitute is not allowed to work indefinitely. If the absence from duty of the regular GDS is likely to last indefinitely, the appointing authority should take immediate steps to make a regular appointment and the person so appointed need not necessarily be the substitute."

3. Instructions dated 25-11-1993 beyond 180 days substitutes continu

4. Subseque 29-12-2000, the de of whether weight employment on pre circulated. Recent Bench of Hon'ble ment of the larger circulated. The sa tutes have no lega cerned. It also Gramin Dak Sevak have been rendered

5. In the case also not recognized hand, the Apex Ce the basis of having stutes have work consider the same and pass appropriate

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7. Thus, it ha guidelines relating involve clarificatio and responsibility who are appointed

8. As per exta at his own risk an authority. Hence i ineligible person is ment is not allowe guidelines may inc to "substitute arra

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cess of 180 cadres by head of the ondone the line to be cising the : that such cadres for al circum- such long e posts of nagement is rule; this on of their oblems. It adiciously

3. Instructions issued *vide* this office letter No. 18-34/92-ED & TRG., dated 25-11-1993 enjoined all Divisional Heads to ensure that long leave beyond 180 days is not granted to a GDS as a matter of routine to avoid substitutes continuing in place of regular incumbents for long periods.

4. Subsequently, *vide* letter No. 19-6/2000-ED & TRG., dated 29-12-2000, the decision of the larger Bench of CAT Bangalore on the issue of whether weightage should be given to persons who have rendered past employment on provisional basis or in the capacity of substitute of GDS, was circulated. Recently, *vide* letter, dated 19-2-2002, the judgment of the larger Bench of Hon'ble High Court of Karnataka, Bangalore upholding the judgment of the larger Bench of CAT Bangalore mentioned above, has also been circulated. The said judgment clearly reiterates the position that the substitutes have no legal right as far as regularization in the Department is concerned. It also takes note that the Department's Recruitment Rules for Gramin Dak Sevaks do not provide for recognition of past service that may have been rendered by them against any post.

5. In the case of *Devika Guha v. Union of India*, the Supreme Court has not recognized the right of the substitute for regularization. On the other hand, the Apex Court has maintained that substitutes have no legal claim on the basis of having worked continuously and if there are cases where the substitutes have worked for a "longer period", it is for the Department to consider the same as to whether there was a proper case for absorption or not, and pass appropriate orders.

6. The matter has been examined in consultation with Ministry of Law. Since the Apex Court has held that substitutes have no legal claim, there can be no definition of the term "longer period" as absorption of substitutes *per se* on regular vacancies without following prescribed procedures of recruitment could lead to nepotism.

7. Thus, it has become necessary to review and reiterate the existing guidelines relating to "substitute" arrangement of GDSs. This would also, involve clarification of the status of the substitute, who is provided at the risk and responsibility of the regular incumbent, *vis-a-vis* provisional appointees, who are appointed by the Department to meet an interim need.

8. As per extant orders, a regular GDS is required to provide a substitute at his own risk and responsibility but subject to approval by the appointing authority. Hence it is the duty of the appointing authority to ensure that any ineligible person is not approved as a substitute and any "substitute" arrangement is not allowed to continue for long periods. Accordingly, the following guidelines may inevitably be kept in view while dealing with matters relating to "substitute arrangements" or their continuance:

(i) Before resorting to substitute arrangement, the following options may be explored:

(a) In case of short-term arrangements as far as possible, work will be managed by combining duties, and "substitutes" will not be provided in leave arrangements. In single-handed BOs, the

work shall be managed by giving combined duty to GDS Mail Deliverer/Mail Carrier (Gramin Dak Vitaraka/Vahak) of the neighbouring BO/SO in whose beat the BO falls.

(b) Even in long-term arrangements, the combination of duties as in (a) above will be resorted to; substitutes will be allowed only if workload of the BO as well as its financial position justifies such engagement or filling of the post on regular basis.

(c) In towns and cities, where departmental officials are also available in the same office, the possibility of managing the work by regular staff by combination of duties or by grant of OTA beyond normal working hours may be explored.

(ii) If substitute arrangement is found to be unavoidable, then it should be ensured that—

(a) No substitute will be allowed to take over charge unless the competent leave-sanctioning/appointing authority is fully satisfied that the substitute possesses all the qualifications prescribed for that appointment and has been provided under the risk and responsibility of the regular incumbent.

(b) Drawing & Disbursing authorities shall not draw allowances of any substitute unless the claim is accompanied by a certificate from the competent authority about the possession of requisite qualifications by the substitutes and their approval for making/continuing the arrangement.

(c) Continuation of substitute arrangements beyond 180 days at a stretch, may only be allowed by the authority next higher to the appointing authority, and only in exceptional cases where action has been initiated for regular appointment, if justified by workload and financial norms.

(d) No substitute arrangement shall continue beyond one year. Hence regular/alternative arrangements must be made during the period beyond 180 days to ensure this. If for any unavoidable reason a substitute arrangement is required to be continued beyond one year, specific approval of the Head of Circle will be necessary for reasons to be recorded by the concerned authority.

9. In the case of provisional appointments, it is clarified that such appointments should be resorted to only in cases where the GDS is unable, quite unexpectedly, to undertake his duties due to his own actions (unauthorized absence, fraud, misappropriation, etc.), due to circumstances beyond his control like sudden serious illness/ accident/death or because the department does not want him/her to continue (due to reasons of misconduct/ dismissal/removal/put off duty, etc.) In all other cases, action should be taken well in advance to fill the post on a regular basis. Even where the post falls vacant unexpectedly, efforts should be made to manage the work through combination of duties as spelt out in Para. 8 (i) (a) & (c). Similarly, even in case of long-term deputation of GDS to the APS, action may be taken to fill

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up the post on regular basis suitably adjusted age

10. Where prov initiated to fill the p appointment, but etc basis. On no account following every for the whole process arrangement may pre combination of dutie function, or by deplc circumstances, should unavoidable reasons, days, approval of the for reasons to be reco

11. In cases where a dependant being dependant fulfils the fallen vacant. This in duties is not feasible. should not exceed or view within that time provisional appointment unless his/her case to Relaxation Committee

12. The extant placed on a waiting list he/she has completed longation of such pr authority should be taken 180 and where the per the Region/Circle, as the incumbent is not reins regularly selected prov to fresh recruitment.

13. The above in appointing authorities above instructions shall be taken against offic continue beyond the p tions.

14. If any previous appointment' al stand superseded by the

up the post on regular basis and the GDS, on return from deputation may be suitably adjusted against vacancies in existence at that given time.

10. Where provisional appointment becomes unavoidable, action may be initiated to fill the post following all the formalities prescribed for regular appointment, but clearly stipulating that the appointment is on a provisional basis. On no account, should a provisional appointment be made without following every formality that is prescribed for regular appointment. Since the whole process will take a period not exceeding 60-90 days, stop-gap arrangement may preferably be made at the local level in the interim through combination of duties or by allowing the GDS from a neighbouring office to function, or by deploying a Mail Overseer to look after the work. Under no circumstances, should such local arrangement exceed 90 days. If, due to some unavoidable reasons, the local arrangement needs to be continued beyond 90 days, approval of the next higher authority is to be taken on a one time basis for reasons to be recorded in writing.

11. In cases where the incumbent dies in harness, there is no objection to a dependant being allowed to function on interim basis, provided the dependant fulfils the qualification/relaxed qualification applicable for post fallen vacant. This may only be resorted to if arrangement by combination of duties is not feasible. However, in such cases also, such interim appointment should not exceed one year and every effort should be made to take a final view within that time frame. It also needs to be clearly stipulated that such provisional appointment does not entitle the dependant to a claim for the post unless his/her case for compassionate appointment is approved by the Circle Relaxation Committee.

12. The extant provisions provide for a provisional appointee to be placed on a waiting list for being considered for a regular appointment after he/she has completed three years of continuous employment. To avoid prolongation of such provisional appointments, approval of the next higher authority should be taken in respect of all provisional appointments exceeding 180 and where the period exceeds one year, express approval of the Head of the Region/Circle, as the case may be, would be necessary. Where the regular incumbent is not reinstated, immediate action must be taken to regularize the regularly selected provisional appointee against the said post without resorting to fresh recruitment.

13. The above instructions may kindly be brought to the notice of all appointing authorities of GDSs for strict compliance. Any violation of the above instructions shall be viewed seriously and action would be required to be taken against officials who allow substitute/provisional arrangements to continue beyond the prescribed limits in contravention of the above instructions.

14. If any previous instructions on the issues of 'substitute' and 'provisional appointment' are found contrary to these provisions, the same will stand superseded by the latter.

(7) **Clarifications on grant of paid leave.**—The Directorate has been receiving references from different circles as also some staff Unions seeking clarification on various matters arising out of the provision of the grant of 10 days paid leave for each half year without carry forward facility, to the Granin Dak Sevaks working in the Department. The following doubts/points are clarified as under:

Sl. No.	Clarification sought by Circles	Clarification
1.	Combination of duties may not be feasible in majority of the cases, and as such can engagement of substitutes be allowed in the case of paid leave also?	Combination of duties is the first option while granting paid leave to the regular GDS.
2.	Should paid leave be granted to GDS only if he provides substitutes or will the Department manage absentee's work on office arrangement?	This has already been clarified at Sl. No. 7 of the Directorate letter No. 14-2/99-PCC/PAP, dated 5-3-1999.
3.	Stage of TRCA payable to substitute of regular GDS who proceeds on leave?	Necessary clarification has already been issued <i>vide</i> Item No. 10 (b) of Dte. letter No. 14-2/99-PCC/PAP, dated 5-3-1999 <i>vide</i> which it is clarified that substitute will get the minimum of the stage.
4.	Who will sanction paid leave to the GDSs?	Appointing Authority will sanction paid leave to the GDSs.
5.	Who will keep account of paid leave of GDSs?	Both appointing authority and Head Post Office will keep record.
6.	Will normal application form be used in the case of paid leave also?	Revised pro forma of application for leave, and leave-sanction-order has already been circulated <i>vide</i> Directorate letter No. 17-379/2000-ED & TRG, dated 28-9-2001.
7.	Are the GDS as well as the substitute provided by him to be paid by the Department, and is the substitute to be paid @ minimum of TRCA?	Yes. The regular GDS, during the period of paid leave, will be paid TRCA at his nominal stage, while the substitute will be paid of the minimum of TRCA.
8.	How the leave eligibility is to be reckoned in respect of GDSs who are recruited in midst of the six monthly period?	If the GDS joins in the middle of the year, leave entitlement will be proportionate to the period of employment for that half of the year. Fraction of .5 or above will be taken as one day of leave.

Sl. No.	Clarification sought
9.	Whether Leave Allowances (LW) granted if applied GDS even when he paid leave at his cre.

10. Will the GDS have leave well in advance

11. If the paid leave is office arrangement combined duty as granted to the GD absentee's work or of the TRCA or GDS?

12. Will the facility of suffix be allowed in with paid leave? 1

2. This issues with
8/F&A/2003, dated 1-1-200

J.D.C., Posts, I.r. No. 17-

"8. As per extant order, the authority to nominate a substitute at his own risk and expense lies with the State Board of Education. Hence it is not permissible for any ineligible person to be nominated. Any arrangement is not allowed. The following guidelines may be followed in this regard:

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GDS (CONDUCT AND EMPLOYMENT) RULES

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Sl. No.	Clarification sought by Circles	Clarification
9.	Whether Leave Without Allowances (LWA) can be granted if applied for by the GDS even when he is having paid leave at his credit?	If the leave sanctioning authority is satisfied, he may sanction leave without allowances if applied for specifically by the GDS even when GDS is having paid leave at his credit.
10.	Will the GDS have to apply for leave well in advance?	Yes. The GDS should apply for paid leave well in advance to enable the appointing authorities to make suitable arrangement, and approve substitute, if need arises.
11.	If the paid leave is granted on office arrangement, will combined duty allowance be granted to the GDS doing the absentee's work or the minimum of the TRCA of the absentee GDS?	Only combined duty allowance will be paid to the GDS in such cases. Question of payment of minimum of the TRCA in such cases does not arise.
12.	Will the facility of prefix and suffix be allowed in conjunction with paid leave?	No.
2.	This issues with the concurrence of FA (P) <i>vide</i> their Dy. No. 8/FA/2003, dated 1-1-2003.	[D.G., Posts, I.r. No. 17-136/2001-GDS, dated the 10th January, 2003.]

(8) Leave should not be refused when combination of duties is not possible.— I am directed to invite your kind attention to this office letter No. 17-115/2001-GDS, dated 21-10-2002, regulating the substitute and provisional arrangements made in place of regular Gramin Dak Sevaks. Para. 8 (i) of the said instructions read:

“8. As per extant orders, a regular GDS is required to provide a substitute at his own risk and responsibility but subject to approval by the Appointing Authority. Hence it is the duty of the Appointing Authority to ensure that any ineligible person is not approved as a substitute and any “substitute” arrangement is not allowed to continue for long periods. Accordingly, the following guidelines may inevitably be kept in view while dealing with matter relating to “substitute arrangements” or their continuance:

- (i) Before resorting to substitute arrangement, the following options may be explored:
 - (a) In case of short-term arrangements, as far as possible, work will be managed by combining duties, and “substitutes” will not be provided in leave arrangements. In single-handed BOs, the

work shall be managed by giving combined duty to GDS Mail Deliverer/Mail Carrier (Gramin Dak Vitaraka/Vahak) of the neighbouring BO/SO in whose beat the BO falls.

- (b) Even in long-term arrangements, the combination of duties as in (a) above will be resorted to; substitutes will be allowed only if workload of the BO as well as its financial position justifies such engagement or filling of the post on regular basis.
- (c) In towns and cities, where departmental officials are also available in the same office, the possibility of managing the work by regular staff by combination of duties or by grant of OTA beyond normal working hours may be explored."

2. Some Circles had sought some clarifications from the Directorate on the issue pertaining to paid leave. If "combination of duties is not feasible can engagement of substitutes be allowed in the case of paid leave also"? Directorate had clarified, *vide* letter No. 17-136/2001-GDS, dated 10-1-2003, that combination of duties is the first option while granting paid leave to the regular GDS which implied that other options including engagement of substitutes were also open while granting paid leave.

3. Notwithstanding the above clarification, this office continues to receive representations from the various staff unions expressing following difficulties due to issuance of above instruction:

- (i) Combination of duties is affecting employment condition with extended working hours without any additional remuneration.
- (ii) GDSs are not being granted paid leave due to misinterpretation of above instructions.
- (iii) GDSs are being denied the opportunity to officiate in Postman/Gr. 'D' cadre.

4. The matter has been examined and it is again clarified that:

- (i) Instructions, dated 21-10-2002 do not provide that combination of duties should be resorted to even if the working hours of the combined duties exceed 5 hours. It is for the leave sanctioning authority to ensure that the combination of duties whenever resorted to does not exceed maximum 5 working hours a day of such GDS. In so far as issue of extra remuneration for additional work is concerned, there is already provision of combined duty allowance.
- (ii) As regards alleged refusal of leave due to wrong interpretation of instructions, dated 21-10-2002, it is clarified that leave should not be refused to GDSs when combination of duties is not possible.
- (iii) Further, instructions, dated 21-10-2002 also do not prohibit making of officiating arrangement against Gr. 'D'/Postman cadre by engaging the GDSs. Para. 8 (b) stipulates that even in long-term arrangement, substitute will be allowed if workload and financial position of BO justifies such engagement or filling up of the post.

21-10-2002

5. While the 21-10-2002 was a sional arrangement intended to deny the leave sanction *vide* Dte. O.M., da ceeding on leave, staff.

[D.G., Posts, Le]

8. Termination

(1) The emp than three years' ment shall be li given either by th

(2) The peric

Provided that forthwith and on sum equivalent to ance plus Dearne the same rates and ination of life e which such notice

NOTE.— Whe ate, it should be Allowance plus D Sevak in lieu of no

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(1) Specimen

Notice of termini

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to GDS Mall 'ahak) of the of duties as is allowed only if position justifies basis. cials are also managing the or by grant of red. Directorate on not feasible can also?" Directive, 10-1-2003, that give to the regulit of substitutes

continues to using following condition with numeration. interpretation of in Postman/Gr. that: combination of ours of the comitting authority resorted to does h GDS. In so far ik is concerned, nce. interpretation of leave should not not possible. t prohibit making n cadre by engag- n-term arrange- financial position ic post.

5. While the basic intention behind the issuing of instructions, dated 21-10-2002, was no doubt to regulate and restrict the substitute and provisional arrangements approved/made by the Appointing Authorities, it was not intended to deny the legitimate leave to the GDSs. As such it is enjoined upon the leave sanctioning authorities that they will not deny paid leave introduced vide Dte. O.M., dated 17-12-1998 on the grounds that duties of the GDS proceeding on leave, etc., cannot be combined with other GDSs/departmental staff.

[D.G., Posts, Letter No. 17/136/2001-GDS, dated the 24th April, 2003.]

8. Termination of Employment

(1) The employment of a Sevak who has not already rendered more than three years' continuous employment from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the Sevak to the Appointing Authority or by the Appointing Authority to the Sevak;

(2) The period of such notice shall be one month:

Provided that the employment of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance *plus* Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his employment, or, as the case may be, for the period by which such notice falls short of one month.

NOTE.—Where the intended effect of such termination has to be immediate, it should be mentioned that one month's Time Related Continuity Allowance *plus* Dearness Allowance as admissible is being remitted to the Sevak in lieu of notice of one month through money order.

DIRECTOR-GENERAL'S INSTRUCTIONS

(1) Specimen forms of Notice.—

FORM — I

Notice of termination of service issued under Rule 6 (a) of P & T EDAs (Conduct and Service), Rules, 1964

In pursuance of Rule 6 (a) and (b) of the P & T Extra-Departmental Agents (Conduct and Service) Rules, 1964, I (name and designation) hereby give notice to Shri/Smt./Kumari (name and designation) that his/her services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him/her.

Station:
Date:

Signature of the Appointing Authority.

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J. Name - Sri Sarumiharu Neth
Spouse Sushanta Neth
Vill. P. 111 dist. Purnia

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post office. — — —
I. He had leased property at post — village
in his own name! — — —

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~~most dangerous~~

9. Results of identification of documents etc -

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but at present this is general not important. So
did not work as an agent of San Jose

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same for consider

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at the first of A. 203 B. P. in September -

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(17)

DEPARTMENT OF POSTS

(A-1)(ii)
(Re-Notification)

From

To

The ~~District Employment Office~~
Employment Exchange
~~at Guwahati~~

No. A-416

Dated at Silchar the 16/6/03

Subject: Appointment to the post of ~~Asst. Branch Postmaster~~ Kalpani G.
under Manipuragan S.O.

2.

The above vacancy was notified by reserving it for ~~SC~~ community, vide this office No. A-416 dated 21/1/03. The vacancy has been re-notified due to non-receipt of applications from the stipulated period. You are therefore requested to nominate a minimum of 3 candidates who fulfil the following eligibility conditions. It is requested to nominate as many candidates as possible. The list of nominated candidates should be sent to reach this office on or before 24/7/03. If no list is received within the stipulated date or a minimum of 3 candidates are not nominated, further action will be taken to fill up the vacancy.

2.

The vacancy is reserved for ~~C.B.C.~~ / not reserved for any community.

In case the minimum number of 3 eligible candidates belonging to the above reserved community is not nominated/ available, you are requested to certify to that effect. Then you may also nominate the candidates belonging to ~~C.C.~~ communities in the order of preference. In case none of the candidates belonging to the reserved community are available, you may also nominate the candidates belonging to OC.

ELEGIBILITY CONDITIONS.

(i) To be fulfilled as on the last date fixed

(i) Age: Above 18 years and below 52 years of age as on the last date for receipt of applications

(ii) Educational qualification: HSLC/Xth standard pass

(iii) Weightage is given for higher qualification. However, this does not bar the candidates with higher qualification from applying for the post.

(iii) Residence

Candidate belonging to places other than Post Office village, can also apply for the post and such candidate should shift the residence to PO village in the event of his/her selection. The selected candidate should produce a proof to that effect within the date prescribed by the undersigned after selection.

Applications of the candidates those who have applied earlier have been treated as cancelled and they should also apply a fresh application within the target date.

e candidate should not be an elected member of the panchayat/ other statutory

3. The candidate should not be an agent of LIC or other insurance/finance companies.

4. (i) All applications covers received would be opened on the specified date, time and venue by the concerned appointing authority, in the presence of all such applicants (and not their representatives) who may be desirous of being present at that time. The selection would also be finalised on the same date immediately after opening the applications then and there only.

5. The cover containing applications should be prescribed in bold letters as
SELECTION COMMITTEE FOR THE POST OF A.D.C. OF THE STATE, KARANDAVALI, MUMBAI.

The appointment is purely temporary and in the nature of a contract liable to be terminated by the competent authority at any time with one month's prior notice. The work is part-time for a period of 5 to 6 hours a day and the appointment will not confer any right on the candidate to claim any regular full-time post in the department. The post carries time related continuity allowance of

Rs 1600/- plus admissible DA.

6. Any kind of influence brought by the candidates regarding appointment, will be considered as a disqualification. No correspondence attempting to influence the selection process, will be entertained.

Yours faithfully,


(Signature & designation)

१५-६-२००४

ग.प.प्र. नं. १५००४
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

89
filed by the applicant
Chowdhury S. Nath
Advocate
18/7/06

In the matter of:-

O.A. No. 204 of 2005

Shri Anup Mishra

-Vs-

Union of India and Others.

-And-

In the matter of:-

Rejoinder submitted by the applicant in reply to the written statements submitted by the respondents.

The applicant above named most humbly and respectfully begs to state as under; -

1. That save and except those which are matters of records, the applicant denies the statements given under "Brief History" in the written statement and further begs to state that the statement that 11 (eleven) applications were received from direct channel out of which there were two eligible OBC candidates and out of those two, Shri Soumitra Nath was selected, is concocted, fabricated, false and manipulated. This apart, it was clearly provided in the advertisement dated 16.06.2003 that the post was meant for OBC and open category candidates and as such the merit was the sole criteria for selection and no person can be selected as being OBC candidate or otherwise ignoring merit, as per law.

2. That the applicant categorically denies the statements made in para 1, 3, 4 and 12 of the written statement and begs to state that the Lalpani B.O was housed in the residence of the father of the applicant Shri Apurba Kumar Mishra, as long as he was working as CDS BPM as per rules and even after his retirement on 01.03.2002, the said BO was running in his residence only until it was illegally shifted by the Respondent No. 5 to a shop which was not even owned by him.

Further, the respondents have stated that the applicant cannot claim for absorption in the post on the basis of services rendered by him as substitute during leave period of his father as per GDS Rule 2001 but they have not explained as to how the claim of a stranger (i.e. Respondent No. 5) can stand on a better footing than that of the applicant who had better marks in HSLC examination and also the experience of working in the post as substitute.

As such, the Original Application is just, legal, bonafide and stands on its own merit and the actions of the Respondents against the applicant are arbitrary, unfair, motivated and illegal.

3. That the applicant categorically denies the statements made in para 5, 6, 7, 8, 9 and 10 of the written statement and begs to state that in the advertisement dated 16.06.03 (Annexure- IV of the O.A) it was clearly mentioned in para 2 that the vacancy is reserved for OBC/any community which implies that the post was open for all and as such merit was the sole criteria for selection as per the settled position of law. The statement the eleven applications were received from open market by issuing local notice is false, fabricated and concocted. Had it been so, then all those candidates also ought to have been called for interviewed on 27.10.04 when the applicant and other two candidates were interviewed but instead only three candidates including the applicant were interviewed which did not include the Respondent No. 5 or those other eleven candidates as stated.

Further, it was clearly stated in para 3 of the advertisement dated 16.06.03 aforesaid that "in case minimum number of three eligible candidates belonging to the above reserved community do not offer their candidature, the candidates belonging to OC community will be considered." The respondents have fairly stated in para 8 and 9 of the written statement that out of eleven applicants, eight were OBC candidates and six of them were found to be ineligible, thereby leaving only two eligible OBC candidates out of which Shri Saumitra Nath was selected. Assuming but not admitting that there were OBC candidates, it is not understood that how one was selected out of only two eligible OBC candidates when the minimum requirements as per advertisement were three eligible OBC candidates. It is also surprising that when the advertisement was open for candidates of all communities, how the selection was made on the basis of OBC and that too in favour of a candidate who did not even appear for interview held on 27.10.04 in which the applicant appeared and came out to be the toper as per his HSLC marks which is the only criterion for selection to this particular post.

It is therefore clearly evident that the selection of Respondent No. 5 was manipulated, concocted, fabricated, illegal and was done through back-door policy, on extraneous consideration, and the Hon'ble Tribunal be pleased to direct the respondents to produce all records pertaining to the selection of Respondent No. 5 and all other candidates. The selection of Respondent No. 5 and the criteria of selection adopted are against the specifications stipulated in the advertisement dated 16.06.03 and are manipulate, fabricated, motivated, unfair, arbitrary and violative of the settled position of law and shifting of the BO from the residence of the applicant's father without any authority of law is opposed to the rules of GDS BPM.

Further, the letter dated 18.10.04 (Annexure- V to the O.A) was issued inviting the candidates to appear with all testimonials for selection

of CDSBPM, Lalpani BO which is clearly evident from Annexure- V. As such, the statement of respondents in para 7 of the written statement that it was not meant for interview is an attempt to mislead the Hon'ble Tribunal.

4. That with regard to the statements made in para 11 of the written statement, the applicant begs to submit that it is clearly evident from the Annexure- VI to this Original Application that the Respondent No. 5 acted as the appointed Agent of Sahara India Commercial Corp. Ltd. even on 31.08.2004 under his own signature. As such the reported inquiry as stated by the respondents is concocted and fabricated and cannot outweigh the documentary evidence annexed to the Original Application. Further, the inquiry report annexed by the respondents as Annexure- B to the written statement is not a formal inquiry report but a casual piece of paper only which is neither readable nor bearing any signature and as such not sustainable.
5. That the applicant categorically denies the statements made in para 13, 14, 15, 16 and 17 and begs to submit that since it was clearly mentioned in the advertisement dated 16.06.03 that the vacancy was meant for "OBC/any Community", the respondents cannot subsequently plead that the said vacancy was reserved for OBC and cannot select Respondent No. 5 on this criteria in a clandestine manner without any interview even when the applicant was much superior and better candidate in order of merit. In the instant case, the eligibility condition as stipulated under para 6 of the advertisement dated 16.06.03 is HSLC/X standard pass and as such the marks of HSLC examination is the sole criterion for selection and resorting to caste/community is discriminatory and violative of the conditions specified in the advertisement. On this score alone, the illegal selection of Respondent No. 5 is liable to be declared as void-ab-initio. As such the deprival of the applicant of his legitimate claim in the post of CDSBPM,

Lalpani BO is violative of the principle of natural justice and opposed to the settled position of law. The appoint of respondent No. 5 to the said post through back-door policy even without interview and depriving the applicant who had higher marks in HSLC in addition to his experience and other eligibility compared to the Respondent No. 5, is illegal, unfair, arbitrary, motivated and bad in law.

As such all the grounds stated by the applicant and reliefs sought for in the Original Application are bonafide and for the ends of justice only.

6. That in the facts and circumstances stated above the Original Application deserves to be allowed with costs.

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VERIFICATION

I, Shri Anup Misra, S/o- Shri Apurba Kumar Misra, aged about 25 years, resident of Misra Bhawan, P.O & Vill- Lalpani (Via Manipur Bagan), Dist- Hailakandi, Assam- 788 165, do hereby verify that the statements made in Paragraph 1 to 6 of this rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 16th day of July, 2006.

Anup Misra