

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No..... 102/2005
R.A/C.P No.....
E.P/M.A No.....

1. Orders Sheet..... Pg..... 1 to.....

2. Judgment/Order dtd. 10-5-2005 Pg..... 1 to..... 3
Disposed.

3. Judgment & Order dtd..... Received from H.C/Supreme Court

4. O.A..... Pg..... 1 to..... 15

5. E.P/M.P..... Pg..... to.....

6. R.A/C.P..... Pg..... to.....

7. W.S..... Pg..... to.....

8. Rejoinder..... Pg..... to.....

9. Reply..... Pg..... to.....

10. Any other Papers..... Pg..... to.....

11. Memo of Appearance.....

12. Additional Affidavit.....

13. Written Arguments.....

14. Amendment Reply by Respondents.....

15. Amendment Reply filed by the Applicant.....

16. Counter Reply.....

SECTION OFFICER (Judl.)

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

ORDER SHEET

Original Application No. 102/05

Misc. Petition No.

Contempt petition No.

Review Application No.

Applicants. Abhijit Sankar

Respondents. U.O.T. Gers

Advocates for the Applicant. A.K. Roy, L. Wapeng

Advocates of the Respondents. M.U. Ahmed, C.A.

Notes of the Registry	Dated	Order of the Tribunal
This application is in form is filed/C. F. for its 50/- deposited vide IPO/DD No. 116411802 Dated 22/4/05	10.05.2005	<p>Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman. The Hon'ble Mr. K.V. Prahladan, Administrative Member.</p> <p>Heard Mr. A.K. Roy, learned counsel for the applicant and also Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents.</p> <p>The application is disposed of at the admission stage itself in terms of the order passed in separate sheets.</p> <p><i>Lev P. Sankar</i> Member</p> <p><i>G. Sivarajan</i> Vice-Chairman</p>

Received application
of Abhijit Sankar
10.05.05
Signed
M. K. Bhattacharjee
13/5/05

13.5.05
Copies of the Judgment
handed over to the
Advocates for the
parties, *Abhijit Sankar*

3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / ~~W.A.~~ NO. 102 of 2005

DATE OF DECISION 10.5.2005.

Sri Abhijit Sarkar APPLICANT(S)

Mr. A.K. Roy & Mr. L. Wapang ADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

Union of India & Ors. RESPONDENT(S)

Mr. M.U. Ahmed, Addl. C.G.S.C. ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

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

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

Judgment delivered by Hon'ble Vice-Chairman.

2
2
2
2
2

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 102/2005

Date of Order: This the 10th day of May, 2005.

The Hon'ble Sri Justice G. Sivarajan, Vice Chairman.
The Hon'ble Sri K.V. Prahladan, Administrative Member.

Shri Abhijit Sarkar
S/o Late B.P. Sarkar
Resident of 01 2C, P & T Colony
Oakland, Shillong,
Working as GDS, Masalchi
Oakland 1 B, Shillong.

... Applicant.

By Mr. A.K. Roy and Mr. L. Wapang, Advocates.

- Versus -

1. The Union of India, represented by the Secretary, Govt. of India, Department of Communication & Information Technology,
Dak Bhawan, New Delhi - 793 001.
2. Chief Postmaster General,
N.E. Circle, Shillong - 793 001.
3. Assistant Director (Staff),
O/O Chief Postmaster General,
N.E. Circle, Shillong - 793 001.

... Respondents.

By Mr. M.U. Ahmed, Addl. C.G.S.C.

ORDER (ORAL)

SIVARAJAN J. (V.C.)

The applicant was appointed to the post of GDS (ED) Masalchi
Departmental IB, Oakland, Shillong provisionally w.e.f. 01.03.2004 as per

lpa

order dated 19.02.2004 (Annexure - B). While the applicant continued in the said post, he received a communication dated 28.04.2005 (Annexure - D) from the Assistant Director (Staff), Department of Posts, Office of the Chief Postmaster General, N.E. Circle, Shillong varying the terms and conditions of the appointment made as per order dated 19.02.2004. The applicant challenges the said order in this proceeding. According to the applicant, his appointment was through the Employment Exchange; the said appointment was not a provisional appointment inasmuch as the provisional appointment is made only for a certain period, which should be specifically mentioned in the appointment order or the same is made against the temporary vacancy. It is also stated that the said action of the respondents is contrary to the statutory provisions of law, also in violation of very contract appointment itself.

2. We have heard Mr. A.K. Roy, learned counsel for the applicant and also Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents.

3. Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that the instructions have to be obtained in the matter for which he requires some time. Having gone through the records, particularly the appointment order, Annexure - B and the variation order, Annexure - D, we are of the view that the Annexure - D varying the terms and conditions of the appointment order which clearly provides that the appointment is a contract one. If as a matter of fact the Annexure - B is the result of the contract it is trite that one of the parties to the said contract cannot unilaterally change the terms and conditions of the contract particularly to



the detriment of the other party. In the instant case, as already noted, Annexure - B order shows that the applicant was provisionally appointed to the post of GDS (ED). There is nothing in the said order to show that the applicant was appointed on casual or daily rated basis. Annexure - D order would show that the applicant is being treated as daily rated Mazdoor which is contrary to the terms of the appointment order - Annexure - B.

3. - In the circumstances, we are of the view that no further instructions are required in the matter as sought by Mr. M. U. Ahmed, learned Addl. C.G.S.C. for the respondents. We accordingly set aside the Annexure - D order and direct the Respondents to act strictly in accordance with the terms and conditions of the appointment order, Annexure - B.

The application is disposed of as above at the admission stage itself.

ICP
 (K. V. PRAHLADAN)
 ADMINISTRATIVE MEMBER

G. Sivarajan
 (G. SIVARAJAN)
 VICE CHAIRMAN

/mb/

6 MAY 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O .A. NO. 102 /2005

Shri Abhijit Sarkar

.....Applicant

VERSUS

Union of India & Others

.....Respondents

LIST OF DATES

<u>DATES</u>	<u>PARTICULARS</u>	<u>PARA</u>	<u>ANNEX</u>	<u>PAGE</u>
4.1.2000	Applicant's father expired when he was a minor. After attaining the age of majority, he got his name registered in local Employment Exchange.	4.ii		
Nov' 2003	Respondents made requisition from employment exchange for filing up one post of GDS. Accordingly, applicant's name was sponsored.	4.iii		
23.12.2003	Respondent's letter directing applicant to submit his application in proforma.	4.iii	A	12
19.2.2004	Appointment order of applicant	4.iv	B	13
26.2.2004	Approval of applicant's appointment after being found medically fit	4.v	C	14
1.3.2004	Applicant joined in the post	4.vi		
27.4.2005	This Hon'ble Tribunal passed stay order against eviction from quarter and against recovery of panal rent in O. A NO 93/2005 which was filed by applicant's mother who is also an employee under the respondents	4.viii		
28.4.2005	Respondents cancell the earlier appointment order and engaged applicant as daily rated mozdoor.	4.vii	D	15

DISTRICT : KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH.

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

O.A. 102/05.

Shri Abhijit Sarkar ... Applicant.
-Vs-

Union of India & Ors. ... Respondents.

I N D E X

<u>Sl.No.</u>	<u>Particulars</u>	<u>Pages.</u>
1.	Application	... 1 to 10
2.	Verification	... 11
3.	Annexure-A	... 12
4.	Annexure-B	... 13
5.	Annexure-C	... 14
6.	Annexure-D	... 15

For use in the Officer :-

Signature :-

Date :-

...

Sarkar

Filed by the
V.H. Abhijit
through -
Ashok K
Advocate
Date 8/5/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH.

(An application Under Section 19 of the Administrative
Tribunal Act 1985)

-BETWEEN-

Shri Abhijit Sarkar,
S/o Late B.P.Sarkar,
R/o 01 2C, P&T Coloney
Oakland, Shillong,
Working as GDS,Masalchi,
Oakland 1,B,Shillong

...Applicant.

-AND-

1. Union of India, represented by
the Secretary, Govt of India,
Department of Communication &
Information Technology,
Dak Bhawan, New Delhi -110 001.
2. Chief Post Mortem General,
N.E.Circle, Shillong - 793 001.
3. Asstt.Director (Staff),
O/O Chief Post Mortem General,
N.E.Circle, Shillong -793 001.

... Respondents.

Contd....



2.

1. Particulars of order against which this application is directed.

This application is made against the letter under Memo No. Staff/4-ED/PF/2004 dated 28.4.2005 (ANNEXURE- D) through which the applicant's appointment order dated 19.2.2004 has been cancelled and engaged him as daily rated mazdoor.

2. JURISDICTION :

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

3. LIMITATION :

That the applicant also declares that this application is made within the time limit as has been prescribed under section 21 of the Administrative Tribunal Act 1985.

4. FACT OF THE CASE :

(i) That the applicant is a citizen of India and at present working under the respondents as Gramin Dak Sevak (in short GDS) at Shillong.

Contd...

Shankar

3.

(ii) That the applicant states that his father was an employee under the respondents who expired on 4.1.2000 when he was a minor one. Due to expiry of father he had to leave his study. After attaining the age of 18 years, he got his name registered under the local employment exchange and started to search for job to help his widow mother.

(iii) That the applicant states that in the month of November, 2003. The respondent authority sent one requisition to the Local Employment exchange, Shillong requesting to sponsor some candidates to fill-up one post of GDS, Inspection Bungalow, Oakland, Shillong and accordingly the Assistant Director of Employment, Employment Exchange sponsored 14 candidates including the name of present applicant. On the basis of the sponsorship of Employment Exchange, the Respondent No.2 vide letter dated 23.12.2003, directed the applicant to submit his application in the prescribed proforma which was also supplied by the respondents. Accordingly, the applicant submitted his application alongwith necessary documents.

Copy of the letter dated 23.12.2003
is annexed herewith as ANNEXURE -A.

Contd...

Alex Mar

(iv) That the applicant states that as he was selected for the post he was offered appointment vide order dated 19.2.2004 for the post of GDS/FD) Masalchi, Department I.B Oakland w.e.f. 1.3.2004, Be it stated here that though the appointment order speaks that the same is provisional appointment for the post, but in fact the same is not a provisional appointment in as much as the format of provisional appointment is completely different. Moreover, as per the Rule, the provisional appointment is made for a particular period and the same should be specifically mentioned in the appointment order. But in the instant case same has not been mentioned in the appointment order.

Copy of the appointment order dated 19.2.2004 is annexed herewith as ANNEXURE-B.

(v) That the applicant states that after the appointment order, he was sent for medical test in which he was declared as fit and hence the competent authority approved his appointment vide order dated 26.2.2004.

Copy of the order dated 26.2.2004 is annexed herewith as Annexure-C.

Contd....

Shrikar

(vi) That the applicant states that after getting the appointment order, he joined in service w.e.f. 1.3.2004 and since then he was performing his duty with ful sincerity and deligently.

(vii) That the applicant states that inspite of his ~~xxxx~~ sincere service for more than one year, the respondent authority cancelled his earlier appointment order by issuing a Memo dated 28.4.2005 and engaged him as a daily rated mazdoor very illegally and without following the due procedure and without serving any prior notice to that effect and thereby degraded his status.

Copy of the Memo dated 28.4.2005 is annexed herewith as Annexure-D.

(viii) That the applicant states that the authority has cancelled his earlier appointment order with malafide intention and to create a pressure on his family. Be it stated here that the applicant's mother is also an employee under the respondents ^{who work} ~~who~~ a GDS on being appointed on compassionate ground. In the month of April 2005 his mother approached the Hon'ble High Court challanging the order of eviction from ~~xxxx~~ quarter and order of recovery of panel rent and there after approached this Hon'ble Tribunal by filing an application

Contd...

Abar Kar

being O.A. No. 93/2005 which is still pending before this Hon'ble Tribunal. As his mother obtained a stay order from this Hon'ble Tribunal, the Respondent No.2 called the applicant and rebuked him saying that he will not allow him to work and after that on 28.4.2005 i.e. immediately on the next day of the stay order, the impugned order has been issued. Now, he afraid of that within few days the respondent will completely remove him from service.

(IX) That the applicant states that he was sponsored by the employment exchange and as he got the job, his name has been struck off from the register of employment exchange and hence if he is not reinstated to his earlier post and/or if he is removed from service, he will suffer irreparable loss and injury.

(X) That the applicant states that the his appointment is GDS (ED) was not at all a provisional appointment in as much as a provisional appointment is made only for a certain period which should be specifically mentioned in the appointment order or the same is made against temporary vacancy ~~caused~~ ^{due to} due to disciplinary proceeding against any GDS(ED) in respect of which any appeal is pending . But in the instant case the same was not the fact, though the appointment order speaks that the same is provisional appointment order.

Contd....

Morkar

(xi) That being aggrieved with the action of the respondents, the applicant approach this Hon'ble Tribunal by filing this application on the following grounds amongst others :-

5.

G R O U N D S

- (i) For that the impugned order is bad in law and is not sustainable.
- (ii) For that the action of the respondents is malafide, arbitrary and whimsical and hence liable to be set aside and quashed.
- (iii) For that the respondents have issued the impugned order only to harass the applicant and his family members and to create pressure on them.
- (iv) For that as the applicant's name has been sponsored by the Employment Exchange, his name has been struck off from register. After he got the employment and hence this appointment as GDS(ED) should not be cancelled in any way otherwise he will suffer from both sides.
- (v) For that the action of the respondents is against the statutory provisions of law and hence is not sustainable in the eye of law.

Contd....

Alor Mar

8.

(vi) For that the said appointment order was not against any temporary vacancy, rather the same was against a permanent vacancy and was made by following the due procedure, the same should not be cancelled by a stroke of a pen of the respondents.

(vii) For that the action of the respondents is illegal in as much as the same violates the Article 14, 16 and 21 read with 311 of the Constitution of India.

(viii) For that at any rate the action of the respondents is illegal and the impugned order is liable to be set aside and quashed.

(ix) For that the action of the respondents is against the principle of natural justice and administrative fair play.

6. Details of Remedies exhausted :-

That the applicant states that as there is urgency, the applicant directly approach this Hon'ble Tribunal against the impugned order praying for an interim stay order.

7. Matter not previously filed or pending before any Court

That the applicant further declares that the applicant has not filed any application, Writ petition

Contd...

9.

or suit regarding this matter before any court or any other bench of this Hon'ble Tribunal nor any such petition or suit is pending before any of them.

8. Remedies sought for :-

Under the fact and circumstances stated above, the applicant prays the following reliefs :-

(i) To set aside and quash the Memo dated 28.4.2005 (annexure- D)

(ii) To direct the respondents to reinstate the applicant to the post of GDS(ED) as he was initially appointed.

(iii) Any other order or orders as Your Lordships may deem fit and proper.

9. Interim Relief prayed for :-

Under the fact and circumstances stated above your Lordships may further be pleased to pass necessary order staying the operation of the Memo dated 28.4.2005 (Annexure-D) and direct the respondents to allow the applicant to work as GDS (ED).

Contd...

Abdul Karim

10.....

11. Particulars of I.P.O. :-

(i) I.P.O. No :- 11 G 411802

(ii) Date of issue :- 22/4/05

(iii) Payable at :- Gunareshwar

12. List of Enclosures :-

As stated in the Index.

Verification.....

Shankar

V E R I F I C A T I O N.

I Shri Abhijit Sarkar, son of Late B.F.Sarkar, aged about 20 years, resident of P & T Colony, Oakland, Shillong -793 001, in the East Khasi Hills district, Meghalaya, do hereby solemnly verify that the statements made in paragraphs 1 to 12 of the application are true to my personal knowledge and the submissions made therein, I believe the same to be true as per legal advice and I have not suppressed any material fact of the case.

And I sign. this verification on this the 2nd
day of May, 2005 at Guwahati.

Date :- 2, 5, 2005

Place :- Guwahati



SIGNATURE.

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL N.E. CIRCLE: SHILLONG-793 001.

No. Staff/26-11/91

Dated Shillong, the 23.12. 2003.

To,

Shri/Smti. Abhijit Sarkar,
Oakland P&T Colony, P.O. Shillong-1.

Sub:-

Recruitment to the post of GDS (ED) Masalchi for Departmental Inspection Bunglaw at Oakland, P&T Colony, Shillong.

It is proposed to make provisional appointment to the post of GDS (ED), Masalchi in the pay scale of Rs.1545-25-2020 (TRCA) per month plus admissible allowance as per departmental rule for the said post.

The job obligation will be to work in the Departmental Inspection bunglaw as masalchi and will be engaged for preparing and helping in preparation of lunch, dinner, break fast etc. for the officers/officials who will stay in the Departmental Bunglaw.

You are requested to submit application in the prescribed proforma (enclosed) along with attested copies of Certificates w.r.t. age, educational qualification, tribe, employment exchange card Cooking Certificate, if any to the undersigned on or before 05.1.04 positively.

26/12
(B. R. Halder)
Asstt. Director (Staff)
For Chief Postmaster General,
N. E. Circle, Shillong.

*Attested by
Abhijit
P.O. Shillong
21/12/03*

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL N.E. CIRCLE: SHILLONG-793 001.

No. Staff/26-11/91

Dated at Shillong, the 19th February 2004.

Shri Abhijit Sarkar, Son of (L) B. P. Sarkar, is hereby appointed provisionally for the post of GDS (ED) masalchi, Departmental I. B. Oakland, Shillong w.e.f. 1-3-04. He shall be paid TRCA as are admissible from time to time as per departmental rule for the said post.

Shri Abhijit Sarkar should clearly understand that his employment as GDS (ED) masalchi shall be in the nature of a contract liable to be terminated by him or by the undersigned by notifying the other in writing and that his conduct and service shall also be governed by the GDS (Conduct and employment Rules 2001 as amended from time to time.

If these conditions are acceptable to him, he should communicate his acceptance in the enclosed proforma.

(B. R. Halder)

Asstt. Director (Staff)

For Chief Postmaster General,
N. E. Circle, Shillong.

Copy to:-

1. The A. D. (A/Cs/WLF), C.O., Shillong.
2. The AAO(BGT), C.O., Shillong.
3. Shri Abhijit Sarkar, QR No.012C, P&T Colony, Oakland, Shillong.
He may furnish acceptance of this offer in the enclosed proforma.
4. F/No. Staff/26-11/86.
5. Office Copy.
6. Spare.

Received the copy
Abhijit Sarkar
20/02/04

Attested by
Abhijit
Advocate
20/02/04

For Chief Postmaster General,
N. E. Circle, Shillong.

C/S

22

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL N.E. CIRCLE: SHILLONG

No. Staff/4-ED/PF/2004

Dated Shillong, the 26th February 2004.

Approval of the competent authority is hereby conveyed allowing Sri Abhijit Sarkar, who has been found medically fit, to join duty as GDS (ED) Masalchi, Departmental I.B, Oakland, Shillong w.e.f. 1-3-2004 in pursuance of C.O., Shillong memo No. Staff/26-11/91 dtd. 19-2-2004.

He will furnish necessary charge reports as per rule to all concerned.

sd/-

(B. R. Halder)
Asstt. Director (Staff)
For Chief Postmaster General,
N. E. Circle, Shillong.

Copy for information & necessary action to:-

1. The A. D. (A/Cs), C.O., Shillong.
2. The JAO(BGT), C.O., Shillong.
3. The O.S., C.O., Shillong.
4. Sri Abhijit Sarkar, Qr. No.012 C, P&T Colony, Oakland, Shillong.
5. File No. Staff/26-11/86.
6. O/C.
7. Spare.

Br
For Chief Postmaster General,
N. E. Circle, Shillong.

Attached by
Abhay
Advocate
21/5/05

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL
N. E. CIRCLE: SHILLONG-793 001.

Under receipt

Memo No. Staff/4-ED/PF/2004

Dated at Shillong, the 28th April '2005.

To

Shri Abhijit Sarkar,
GDS Masalchi,
Oakland I.B, Shillong.

Subject:-

Services of Shri Abhijit Sarkar GDS Masalchi, I.B. Oakland, Shillong.

1. This office Memo no. Staff/26-11/91 dt. 19-2-2004 is hereby cancelled.

2. Shri Abhijit Sarkar, who was provisionally appointed as GDS, Masalchi, Oakland I.B, Shillong vide this office Memo. of even number dated 19-2-2004 shall henceforth be engaged in duty as and when required by the competent authority. He will be treated as a daily rated mazdoor, as and when required.

3. On no day, the period of engagement shall exceed three hours daily.

4. For the under mentioned dates, the services of the above mentioned official will not be required

- (a) From 30-4-05 to 03-05-2005
- (b) From 11-05-05 to 20-05-2005
- (c) From 28-05-05 to 31-05-2005

The above dates are subject to change by the competent authority as and when required.

5. During any dates on which the services of the above mentioned official are not utilized/required, the official will not be entitled to the pay & allowances, and will not be paid any such pay & allowances for those days.

6. Remuneration of DRM shall be governed at rates, prescribed by the Dept. of Posts, Govt. of India.

(A. B. Dutta)
Asstt. Director (Staff)

Copy to:-

- 1. The O/S, C.O, Shillong.
- 2. The D. A. (P), Shillong.
- 3. The A. D. (A/Cs), C.O, Shillong.
- 4. The S. S. A&P Sections, C.O, Shillong.
- 5. The JAO BGT Section, C.O, Shillong.
- 6. Office Copy.
- 7. Spare.

Attacted by
A. B. Dutta
Advocate

SD/-
For Chief Postmaster General,
N. E. Circle, Shillong.