

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 1401/2006.....

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SECTION OFFICER (Judl.)

Kalita
23.10.17

FROM No. 4.
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERSHEET

1. original Application No. 140/06
2. Misc Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

Applicant(s) Ajmir Ali

Respondents U.O.P. from B.M.S. B.S.S.

Advocate for the Applicant(s) Mr. S. Samanta, Mrs. B. Devi

Advocate for the Respondant(s) Sr. C.A.S.C. G. Baishya

Notes of the Registry	Date	Order of the Tribunal
	<u>13.06.2006</u>	Present : Hon'ble Sri K.V. Sachidanandan, Vice-Chairman.
This application is an issue is filed C.R. for Rs. 50/- and passed vide I.P.C. No. No. 266324216.		The applicant is claiming regular absorption under the respondents. Earlier he preferred O.A. No. 86/2004, which was disposed of with a direction to consider the case of the applicant. He made representation, but his representa- tion was rejected on 21.05.2005 on the ground that there is no vacancy and GDS Casual labourers are to be given preference to the engagement. Thereafter the applicant has filed another repres- entation on 25.10.2005 pinpointing 6 vacancies, 1 in Banova Nagar SO, 2 in Ulubari SO, 1 in Khanapara SO and 2 in Guwahati GPO.
Dated.....15.5.06..... Dy. Registrar SAC		Heard Ms. B. Devi, learned counsel for the applicant and Mr G. Baishya, learned Sr. C.G.S.C. for the respond- ents.
Pl. comply order dt'd 13.6.06. 14.6.06		Learned counsel for the respond- ents submitted that he would like to take instruction.

Contd/-

04/06/06

Contd/-

13.06.2006

Issue notice to the respondent No.2

Learned counsel for the respondents is directed to take instructions as to the vacancies that has been pinpointed by the applicant.

Post on 14.07.2006.

Notice & order
Dt. 13/6/06 sent
to D/Section for
issuing to resp.

No-2, received by
hand. ^{mb}

~~(Cas~~ 13/6/06 D/No. 629

~~20/6/06~~ Dt. 21/6/06

14.7.2006

Respondents are directed to take instruction as to the question of vacancies that has been directed to be taken on 13.6.2006 by the next date.

Post on 27.7.2006.

Vice-Chairman

① Service report
awaited

bb

13.7.06

27.07.2006

Learned counsel for the respondents wanted time to get instructions as to the vacancy position.

Post on 16.08.2006.

Vice-Chairman

① Notice issued on 21.6.06
② Service report awaited

bb

Service report
awaited

mb

01.09.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

Considering the issue involved and legal position, I am of the view that O.A. to be admitted. Admit.

Post on 19.10.2006 for filing reply statement.

Vice-Chairman

23.10.06

MO W.S. filed

/mb/

Dr

24.10.2006 Mr.G.Baishya, learned Sr.C.G.S. C. requests for further three weeks time to file reply statement. Let it be done.

Post on 20.11.2006.

[Signature]
Vice-Chairman

bb

20.11.2006 Present: Hon'ble Sri K.V. Sachidanandan Vice-Chairman.

Learned Counsel for the Respondents wanted time to file reply statement. Let it be done. Post on 05.12.2006.

[Signature]
Vice-Chairman

/mb/

5.12.06 Further four weeks time is allowed to the respondents to file written statement. Post on 2.1.07 for order.

[Signature]
Vice-Chairman

pg

8.1.07 Counsel for the Respondents has filed written statement. Copy of the written statement is given to the applicant's counsel. In the meantime rejoinder if any may file by the applicant. Post the matter on 2.2.06.

[Signature]
Vice-Chairman

lm

22.1.2007 Mr.R.Das, learned counsel for the Applicant wanted to file rejoinder. Let it be done. Post on 12.2.2007.

[Signature]
Vice-Chairman

/bb/

17-11-06

No Wb has been filed.

[Signature]

No Wb has been filed.

[Signature]
4.12.06.

No Wb has been filed.

[Signature]
5.1.06.

9.1.07

Wb filed by the Respondents.

[Signature]

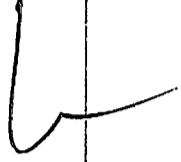
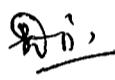
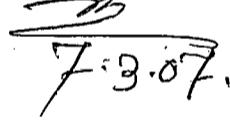
No rejoinder has been filed.

[Signature]
19.1.07.

No rejoinder has been filed.

[Signature]
9.2.07.

O.A. No.140/2006

Notes of the Registry	Date	Order of the Tribunal
<p><u>27-2-07</u> No rejoinder filed. 19</p>	12.02.2007	<p>Ms.B.Devi, learned counsel for the Applicant sought for further time to file rejoinder. Let it be done within two weeks. Post on 28.2.2007</p> <p> Vice-Chairman</p>
<p><u>2-3-07</u> Rejoinder submitted by the Applicant. page contains 1 to 4. </p>	/bb/ 28.2.07. 1m	<p>Counsel for the applicant has submitted that rejoinder has filed to-day. Post the matter on 28.3.07.</p> <p> Member</p> <p> Vice-Chairman</p>
<p>W/S and rejoinder has been filed. </p>	8.3.2007	<p>Mr.G.Baishya, learned Sr.C.G.S.C. seeks for three weeks time for taking further instruction in the matter. Let it be done. Post the matter on 02.04.2007.</p> <p> Vice-Chairman</p>
<p>i) W/S has been filed by the Registry on 8.1.07. ii) Rejoinder has also been filed by the applicant on 28.2.07. </p>	/bb/ 2.4.2007 bb	<p>It is represented and submitted that the pleadings are completed and the matter is ready for hearing. Post accordingly for hearing on 3.5.2007.</p> <p> Vice-Chairman</p>

03.05.07. Post the matter before the next available Division Bench.

Vice-Chairman

lm

The case is ready
for hearing.

33
4.12.07

29.5.07. Post the matter before the next available Division Bench.

Vice-Chairman

lm

The case is ready
for hearing.

33
10.12.07

05.12.2007 On the request of Mr. G. Baishya, learned Sr. Standing counsel appearing for the Union of India, this matter stands adjourned to 11.12.2007.

Call this matter on 11.12.2007.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

11.12.2007 Heard Mr H.K. Das on behalf of Mr S. Sarma, learned Counsel for the Applicant and Mr G. Baishya, learned Sr. Standing Counsel for the Union of India and perused the materials placed on record. For the reasons recorded separately, the O.A. stands dismissed. No costs.


(G. Ray)
Member (A)


(M. R. Mohanty)
Vice-Chairman

nkm

18.3.08
Renu. Ray
G. Ray
586 & 587 D/No
1.1.08
J. Ray

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 140/2006

DATE OF DECISION : 11-12-2007

Md. Ajnur Ali Applicant/s
Mr H. K. Das Advocate for the
..... Applicant/s

-Versus -

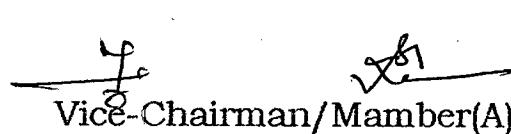
Union of India & Ors. Respondent/s
Mr G. Baishya, Sr.C.G.S.C. Advocate for the
..... Respondent/s

CORAM

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR GAUTAM RAY, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the judgment ? Yes/No ✓
2. Whether to be referred to the Reporter or not ? Yes/No ✓
3. Whether their Lordships wish to see the fair copy of the judgment ? Yes/No ✓


Vice-Chairman/Mamber(A)



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.140 of 2006.

Date of Order : This the 11th Day of December, 2007.

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR GAUTAM RAY, ADMINISTRATIVE MEMBER

Md. Ajnur Ali,
Son of Md. Abdul Ali,
Resident of Village Barpathar,
C/o Md. Khasnur Ali,
P.O. Basistha,
Guwahati-781029.

.....Applicant

By Advocate Shri H.K.Das.

Versus –

1. The Union of India,
Represented by Secretary to the
Govt. of India,
Ministry of Communication,
Dept. Of Post,
Dak Bhawan, New Delhi.

2. The Chief Postmaster General,
Dept. Of Post,
Meghdoot Bhawan,
Guwahati-1.

3. Sub Divisional Inspector of Post Offices,
East Sub Division,
Guwahati-1.

.....Respondents

By Shri G. Baishya, Sr.C.G.S.C.

ORDER (ORAL)

GAUTAM RAY, (MEMBER-A)

The present Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed challenging the impugned order issued by the Senior Superintendent of Post Offices Guwahati Division, Guwahati (Annexure-11 to this O.A), vide Memo

No.A-2/76/Basistha/CAT case/OA No.86/04 dated 21.9.2005, rejecting the case of the Applicant for regular absorption against any Group 'D' post as well as for grant of temporary status under the scheme.

2. The case of the Applicant in a nutshell is as follows :

The Applicant was engaged to work as nominee EDDA as per nomination made by one Mr Chandi Ram Baruah, GDS DA Beltola SO and by Md. Jamshed Ali, GDS DA Basistha SO from 01.03.2000. The Applicant was the son-in-law of Md. Jamshed Ali. He worked as such till 30.11.2003. When Mr Chandi Ram Baruah joined duty, the applicant's services were discontinued. Immediately, thereafter, he made a representation dated 10.12.2003 seeking for his reinstatement in service. The said request was not considered. According to the Applicant, there is a scheme granting of temporary status to casual workers and the applicant fulfills all the eligibility criteria. The Applicant also relied on certain orders of this Tribunal which according to the applicant are in his favour. The Applicant wants assignment of temporary status and regularization of his service as EDDA under the Respondents. When his representation was rejected, he filed O.A.No.86 of 2004 before this Tribunal and this Tribunal disposed of the said Original Application vide its order dated 11.05.2005, whereby the Applicant was directed to make a representation within a period of 6 weeks from the date of judgment containing all details before the concerned Respondent in which case the said Respondent shall certainly consider the same in the light of the decision of the Hon'ble Supreme Court and take appropriate decision in accordance with law

within a period of 4 months thereafter. The applicant made representation indicating the vacancies against which he could be accommodated but his representation has been disposed of by the impugned order dated 21.09.2005, which is reproduced as follows :

"In view of what have been discussed above and explained in para 4 and 5 above, there is no merit in the representation of the petitioner. Therefore, the claim of the petitioner for regularization/absorption in the department as well as conferment of casual labourer status followed by temporary status in Group D' post can not be entertained. However, keeping in view the policy/guidelines of the Department and reiteration by the Hon'ble Supreme Court and the Hon'ble Tribunal in the present OA, the petitioner is informed that his case for recruitment in Group D' vacancy will be considered when such exercise is taken up in the division on availability of vacancies that too when other categories like GDS, casual labourers are not available as per priority list contained in the Dte's letter referred to above and also subject to relevant recruitment rules."

Being aggrieved the Applicant has filed the instant Original Application seeking for the following reliefs.

- "i) To set aside and quash the impugned oral termination order terminating the service of the applicant with effect from 30.11.2003 and to reinstate him in his service with full back wages with other consequential service benefits, as has been done in case of other similarly situated employees.
- ii) To set aside and quash the impugned order dated 21.9.2005.
- iii) To direct the respondents to regularize the service of the applicant in terms of the scheme and it's subsequent clarification time to time.
- iv) To direct the respondents to accommodate the applicant against any Group-D post or any post under GDS scheme or any other like scheme.



3. The Respondents have contested the Application by filing a counter reply inter alia stating that the applicant is not entitled to any relief as prayed for and the application is liable to be dismissed.

4. We have heard Mr H.K.Das, learned counsel appearing for the Applicant and Mr G.Baishya, learned Sr. Central Government Standing Counsel for the Respondents. We have also perused the pleadings of the either parties and the material documents produced before us. The Respondents along with the written statement have enclosed a copy of judgment of the Hon'ble Calcutta High Court Circuit Bench, Port Blair dated 13.06.2003 in W.P.C.T No.58 of 2003, in the matter of Shri Sanjib Kumar Mondal vs. Union of India and Others. In that case Their Lordships have observed that "the rules do not permit absorption of nominated EDDAs" and dismissed the same. In the case at hand also the Applicant was a nominated EDDA.

5. When asked, the learned counsel for the Applicant could not produce any rule in favour of the Applicant for being regularized in the service.

6. In that view of this matter the Applicant is not entitled to get the reliefs prayed for and accordingly his Application is liable to be dismissed.

7. For the reasons recorded above, the Original Application is dismissed without any order as to costs.


(GAUTAM RAY)
ADMINISTRATIVE MEMBER


(MANORANJAN MOHANTY)
VICE CHAIRMAN

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

guwahati bench
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Title of the case :

O.A. No. 140 of 2006

BETWEEN

Ajnur Ali Applicant.

AND

Union of India & ors. Respondents.

I N D E X

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Filed by : *[Signature]*

Regn. No. :

File id:\private\aznur

Date : 31-5-06

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O.A. No. 140 of 2006

Ajnur Ali

..... Applicant.

AND

Union of India & ors.

..... Respondents.

SYNOPSIS

The applicant in the present OA is aggrieved by the impugned communication dated 21.9.2005 by which the prayer made by him for regular absorption has been rejected arbitrarily. The applicant claiming regular absorption under the respondents, preferred OA NO.86/04 highlighting the fact that similarly situated employees like that of him has been given the benefit of absorption. The Hon'ble Tribunal having regard to the facts narrated in the said OA, was pleased to dispose of the said OA vide its judgment and order dated 11.5.2005, directing consideration of the case of the applicant for regular absorption in terms of the Apex Court Judgment as well as as per the scheme. The applicant made representations indicating the vacancies against which he could be accommodated but his claim has been rejected by the impugned order dated 21.5.2005. The applicant made representations to the concerned authority but same yielded no result in positive. Situated thus the applicant now has came under the protective hands of this Hon'ble Tribunal seeking redressal of his grievances. Hence this application.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

D.A.No. 140 of 2006

BETWEEN

Md. Ajnur Ali
son of Md. Abdul Ali
Resident of Vill. Barpathar
C/o Md. Khasnur Ali
P.O. Basistha
Pin.-781029.

..... Applicant.

- AND -

1. The Union of India.
Represented by Secretary to the
Govt. of India,
Ministry of Communication
Dept. of Post,
Dak Bhawan, New Delhi.
2. The Chief Post Master General
Dept. of Post,
Meghdoot Bhawan,
Guwahati-1.
3. Sub Divisional Inspector of Post Offices
East Sub-Division,
Guwahati-1.

..... Respondents.

PARTICULARS OF THE APPLICATION

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

This application is directed against the impugned order issued vide Memo No.A-2/76/Basistha/CAT case/DA No.86/04 dated 21.9.2005 issued by the Sr. Supdt. of Post Offices, rejecting the case of the applicant for regular absorption against any Gr.D posts, as well as for grant of temporary status under the scheme.

*Filed by:-
The Applicant
-through
Bonalma Devi*

*Advocate
26.5.06*

2. LIMITATION:

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

3. JURISDICTION:

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

4. FACTS OF THE CASE:

4.1. That the applicant is a citizen of India and as such he is entitled to all the rights, privileges and protections as guaranteed by the Constitution of India and laws framed thereunder.

4.2. That the applicant in the present OA is aggrieved by the impugned communication dated 21.9.2005 by which the prayer made by him for regular absorption has been rejected arbitrarily. The applicant claiming regular absorption under the respondents, preferred OA NO.86/04 highlighting the fact that similarly situated employees like that of him has been given the benefit of absorption. The Hon'ble Tribunal having regard to the facts narrated in the said OA, was pleased to dispose of the said OA vide its judgment and order dated 11.5.2005, directing consideration of the case of the applicant for regular absorption in terms of the Apex Court

Adm.

Judgment as well as as per the scheme. The applicant made representations indicating the vacancies against which he could be accommodated but his claim has been rejected by the impugned order dated 21.5.2005. The applicant made representations to the concerned authority but same yielded no result in positive. Situated thus the applicant now has came under the protective hands of this Hon'ble Tribunal seeking redressal of his grievances.

This is the crux of the matter for which the applicant has come under the protective hands of this Hon'ble Tribunal seeking redressal of his grievances.

4.3. That the applicant hails from a very poor family and after completing his graduation he could not continue his further studies and for want of job he registered his name in the local employment exchange. The applicant in search of job kept of visiting the office of the respondents and finally a post of Extra Departmental Delivery Agent fell vacant in the Basistha Sub Office under Respondent No.3 and said respondent recruited the applicant in the month of February 2000 as EDDA. It is pertinent to mention here that the EDDA who was working in the Basistha Sub office and he was given promotion to the post of Gr. D and due to such promotion the post of EDDA fell vacant and the applicant got his appointment in the said vacant post of EDDA. To that effect the respondents have issued the charge report dated 26.2.2000 handing over the charge of EDDA to the applicant w.e.f. 1.3.2000.

A copy of the said charge report is annexed herewith and marked as Annexure 4.

[Signature]

4.4. That the applicant after such appointment continued to hold the said post of EDDA without any break and he has completed about 4 years of service. However the respondents did not take any step for regularisation of his service against any post. The applicant kept on pursuing the matter before the respondents praying for his regular absorption but same yielded no result in positive.

A copy of one of such representation
is annexed herewith and marked as
Annexure-2.

4.5. That the applicant begs to state that as per the Apex Court's Judgment, the respondents have prepared a scheme for grant of temporary status to the Casual Workers and the present applicant fulfills all the eligibility criteria laid down in the said scheme. It is pertinent to mention here that the said scheme underwent various clarifications and the said scheme is still in existence. In fact the benefit of the said scheme has been extended to the similarly situated employees like that of the present applicant.

A copy of the said scheme and the
order dated 1.11.95 are annexed
herewith and marked as Annexure 3 &
4.

4.6. That the applicant begs to state that this Hon'ble Tribunal had occasions to adjudicate similar cases wherein

Adhi.

direction has been issued for regularisation of the services of these Casual Workers. In this context mention may be made of one Sri Kailash Das who was engaged as a Substitute and his service was terminated without any notice, making a grievance against the termination and making a prayer for regular absorption said Sri Kailash Das preferred OA NO.188/91 before the Hon'ble Tribunal and the Hon'ble Tribunal vide judgment and order dated 27.7.95 allowed the said OA setting aside the order of termination. The Respondents there after went upto the Apex Court and the Hon'ble Apex Court upheld the Judgment passed by this Hon'ble Tribunal dismissing the SLP. The Respondents now have implemented the judgment and after making arrear payment, said Mr. Das was reinstated and his service has been regularised against Group- D post.

A copy of the said judgment and order dated 27.7.95 passed in OA 188/91 is annexed herewith and marked as Annexure-5.

4.7. That the applicant begs to state that one Smt. Anima Kalita similarly situated like that of the present applicant claiming similar benefit preferred OA No.40/96 before the Hon'ble Tribunal and the Hon'ble Tribunal after hearing the parties to the proceeding, was pleased to dispose of the OA directing the Respondents to reinstate her in her service and to grant her temporary status under the scheme. The Hon'ble Tribunal was further pleased to protect her salary and direction was issued for arrear payment. Accordingly the Respondents conferred her temporary status

Adli.

as per the scheme w.e.f. 22.9.98 however other reliefs were not extended to her. Situated thus she filed yet another application (OA No.179/01) before this Hon'ble Tribunal and this Hon'ble Tribunal was pleased to allow the OA vide judgment and order dated 6.2.2002, and by now she has been extended with all the benefit of the Judgment and she along with the arrears, is enjoying the regular Gr.D service and salary.

Copies of the judgment and order dated 28.8.98 and judgment and order dated 6.2.2002 are annexed herewith and marked as Annexure-6 & 7 respectively.

4.8. That the applicant is a similarly situated employee and as such he is entitled to the benefit as has been granted to the applicants of the OA No.188/91 and OA 179/01. The applicant made several prayers before the authority concerned, but same yielded no result in positive. The applicant since his joining from the month of March 2000 continued to work till 30.11.2003. The Respondents without issuing any order terminated the service of the applicant. As per the law laid down by Hon'ble Apex Court the applicant is a holder of Civil Post and as such he is entitled to the protection under Article 311 of the Constitution of India.

4.9. That the applicant assailing the legality and validity of the inaction on the part of the respondents in not regularizing his service as has been done in case of other similarly situated employes, preferred an Original



Application which was registered and numbered as OA No.86/04. The applicant while highlighting his grievances in the said OA also pointed out the cases of other similarly situated employees namely, one Mr.Kailash Das and another Smt. Anima Kalita wherein the respondents regularised their substitute service against regular Gr.D vacancy with full back wages.

That the applicant instead of repeating the contentions raised in the said OA, begs to state rely and refer upon the same at the time of hearing of the case, and therefore, craves leave of the Hon'ble Tribunal to call for the records of OA No.86/04 at the time of hearing of this OA.

4.10. That the present respondents who have been arrayed as party respondents in OA No.86/04 (filled by the applicant), submitted their Written Statement controverting the statement made in the said OA. The basic contentions raised therein by the respondents were that the applicant was holding the post as an outsider and he was appointed as a substitute against the vacancy occurred due to promotion of one Sri Chandiram Baruah, GDS DA, as a gap arrangement. However, it was not disputed by the respondents that under similar fact situation, subject to the Judicial pronouncement of this Hon'ble Tribunal, persons similarly situated like that of the present applicant have been regularised, with full back wages.

A copy of the said written statement is annexed herewith and marked as Annexure-8.

4.11. That the applicant on receipt of the said written statement, submitted the rejoinder controverting the statements made in the written statement. The Hon'ble Tribunal on 11.5.2005 was pleased to hear the OA at length and disposed of the said OA directing the respondents to consider the case of the applicant subject to availability of vacancy and to consider his case for grant of temporary status as per the scheme. The Hon'ble Tribunal while discussing each and every aspect of the matter discussed various Apex Court Judgment and passed direction to consider his case in the light of said judgment.

A copy of the said Judgment and order dated 11.5.2005 passed in OA No.86/84 is annexed herewith and marked as Annexure-9.

4.12. That the applicant begs to state that immediately on receipt of the copy of the aforesaid judgment and order dated 11.5.2005 passed in OA No.86/2004, he submitted a representation dated 25.5.2005 to the concerned authority praying for his absorption. In his above representation, he mentioned the cases of other similarly situated employees while making the prayer for his absorption.

A copy of the said representation dated 25.5.2005 is annexed herewith and marked as Annexure-10.

4.13. That the respondents on receipt of the representation dated 25.5.2005, issued the impugned communication dated 21.9.2005 rejecting the prayer made by

Ach.

the applicant for his permanent absorption as well as the benefit under the scheme towards temporary status, on the count of non-availability of vacancy. The respondents have failed to appreciate the directions contained in the said judgment and order dated 11.5.2005 and passed arbitrarily the impugned order dated 21.9.2005.

A copy of the said impugned order is annexed herewith and marked as Annexure-11.

4.14. That the applicant on receipt of the said impugned order submitted a representation dated 25.10.2005 praying for reconsideration of his case. In the aforesaid representation dated 25.10.2005, the applicant while highlighting his case also placed the vacancies available in Guwahati Circle. It is pertinent to mention here that at present there are number of vacancies available in Guwahati Circle and there are about 50 (fifty) vacancies in Gr.D cadre in different Circles excluding the vacancies indicated by the applicant in his representation dated 25.10.2005 and the respondents can very well accommodate the applicant against any of such Gr.-D category.

A copy of the said representation dated 25.10.2005 is annexed herewith and marked as Annexure-12.

4.15. That the applicant begs to state that the applicant admittedly with due diligence worked for about 4 years as casual worker as substitute and as such his case can not be rejected basing on the nomenclature. The basic issue in rejecting the case of the applicant for grant of temporary status as reflected in the impugned order is that

Adhi.

he worked as substitute in the Postal Deptt, as such he is an outsider. Such irrelevant plea of outsider is nowhere available in service jurisprudence. The nature of duties and responsibilities attached to a substitute and a casual worker are same and similar and the entry qualification for both the posts are same. Even the mode of employment and other formalities are also similar. It is under the fact situation of the case, the reasoning placed in rejecting the claim of the petitioner in the impugned order is per-se illegal and same depicts total non-application of mind by the respondents and as such same is liable to be set aside. In fact, the scheme in question came in to effect pursuant to a Apex Court Judgment wherein there was a categorical direction towards preparing a scheme on rational basis taking into consideration one year continuous service of daily waged employees.

4.16. That the applicant begs to state that the applicant who continued for fairly long period as Casual/Substitute employee under the respondents as such his service is required to be regularised. In fact the Hon'ble Tribunal in its judgment and order dated 11.5.2005 while discussing the Apex Court verdicts, directed the concerned authority to consider the case of the applicant for regular absorption, in any Group-D post. The respondents in the impugned order dated 21.9.2005 has rejected the claim of regular absorption of the applicant for want of vacancies. But the statement made in the said impugned order dated 21.9.2005 regarding no vacancy/ want of vacancy is false. At present there are number of vacancies available in the Guwahati Circle as indicated in the representation dated

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25.10.2005 filed by the applicant. It is further stated that in all over Assam there are over one hundred vacancies in the Gr.D category under the respondents and there is no difficulty in absorbing the applicant against any one of such vacancies, more as when the applicant had acquired vast experience in serving in those posts. It is under the fact situation of the case the impugned order dated 21.9.2005 is not at all sustainable in the eye of Law and liable to be set aside. Apart from that taking into consideration the misleading statement regarding vacancy, the Hon'ble court may be pleased to draw suo-moto contempt proceeding against each respondents and thereafter to punish them severely for such willful and deliberate suppression of material facts before the Hon'ble Court to frustrate the judicial order passed by the Hon'ble Tribunal.

4.17. That the Respondents after terminating the service of the applicant making a move to fill up the said post by other fresh recruitee on temporary basis for the reasons best known to them. The law is well settled that a service of a temporary employee can not be replaced by another temporary employee. Even after repeated requests made by the applicant, the Respondents have not yet reinstated the applicant violating the settled proposition of law, as such appropriate direction need be issued to the Respondents to accommodate the applicant against any adhoc vacant post as has been done in the case of other similarly situated employees.

4.18. That the applicant begs to state that the scheme and it's subsequent clarifications issued from time to time clearly indicate the need of regularisation of the

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services of the casual workers. It is pertinent to mention here that since 2000 to 2003 the applicant has completed the requisite length of service as described in the scheme and as such his case is required to be considered under the said scheme. The Respondents even after repeated request made by the applicant have not taken into consideration his prayer and passed the impugned order which is not at all sustainable in the eye of law.

4.19. That the applicant begs to state that the Respondents have acted contrary to the settled proposition of law in terminating the service of the applicant without affording him the reasonable opportunity of hearing which is the basic minimum requirement as described under Article 311 of the Constitution of India and laws framed thereunder.

4.20. That the applicant begs to state that in the office of the Respondents No.2 there are number of vacancies available in the Group-D cadre and as such the Respondents can very well accommodate the applicant against any of such posts. However, contrary to that the Respondents have terminated the service of the applicant that too without any notice as required under the law. In that view of the matter the applicant through this application also pray for an interim order to direct the Respondents to reinstate him in his service during the pendency of this OA.

5. GROUND FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action/inaction on the part of the

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Respondents in dispensing with the services of the applicant that too in a very unfair manner is arbitrary, illegal and violative of principles of natural justice and as such the impugned oral termination is liable to be set aside and quashed.

5.2. For that the respondents have acted contrary to the settled proposition of law in not providing similar relief to the present applicant and as such the impugned order issued by the Respondent is liable to be set aside and quashed.

5.3. For that the applicant having fulfilled all the requisite qualification as described in the scheme is entitled to be regularised, however the Respondents for the reasons best known to them virtually rejected his prayer and as such same is not sustainable and liable to be set aside and quashed.

5.4. For that the respondents there are number of vacancies available to accomodate the service of the applicant and the respondents can very well accommodate the applicant against any of these vacant posts but the Respondents instead of accommodating the applicant terminated his service without affording him the reasonable opportunity of hearing and as such appropriate direction need be issued to the Respondents to reinstate the applicant and to regularise his service.

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

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

6. DETAILS OF REMEDIES EXHAUSTED:

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

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

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

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after

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hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

- 8.1. To set aside and quash the impugned oral termination order terminating the service of the applicant w.e.f. 30.11.2003 and to reinstate him in his service with full back wages with other consequential service benefits, as has been done in case of other similarly situated employees.
- 8.2. To set aside and quash the impugned order dated 21.9.2005.
- 8.3. To direct the respondents to regularise the service of the applicant in terms of the scheme and it's subsequent clarification time to time.
- 8.4 To direct the respondents to accommodate the applicant against any Group-D post or any post under GDS scheme or any other like scheme.
- 8.5. Cost of the application.
- 8.6. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

[Signature]

During the pendency of this application the applicant prays for an interim order directing the Respondents to reinstate the applicant in his present place of posting and to allow him to draw regular pay and allowances.

10.

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

1. I.P.O. No. : 26 G 324216
2. Date : 15.5.06
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

Yashu.

VERIFICATION

I, Sri Ajnur Ali, aged about 28 years, son of Late Abdul Ali, resident of Vill. Barpathar, P.O. Basistha, Pin-781029, do hereby solemnly affirm and verify that the statements made in paragraphs 4:15-4:19..... are true to my knowledge and those made in paragraphs 4:2-4:14... are matter of records and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 25th day of ... May ..., 2006.

Md. Ajnur Ali

Signature.

✓ 18/03/03

ए. पी. जो. ५६१
A.P.C. 561

भारतीय डाक विभाग
DEPARTMENT OF POSTS INDIA

(देखिये नियम २६१, डाक-तार वित्त पुस्तक का खण्ड १, हितोय संस्करण)
(See Rule 261, Posts and Telegraphs Financial Handbook, Volume I, Second Edition)

चार्ज को बदली पर चार्ज योट और नकदी और टिकटों की रेसिप्ट
Charge Report and Receipt for cash and stamps on transfer of charge

प्रमाणित किया जाता है कि

का

Certified that the charge of the office of

S.D.D.A.

Chandi Ram Baruah.

चार्ज (मास) में
was made over by (name)

(नाम) को
to (name) MD Ajmuz Ali

स्थान
at (place)

तारीख १३.२.२००२ पो. पांडा
B-1/Bell Hola

on the (date).....

26/2/2002

fore
after noon in accordance with

सं. No. ३३३३३

तारीख
Dated

भारत अधिकारी
Relieved Officer

के अनुसार दे रिया। S.D.D.A.

from
मार्यादा अधिकारी
Relieving Officer

(प. ए. प. ट. अधिकारी)
(P. T. O.)

MPR

12/3/03

13/2/03

RECEIVED
13/2/03
RECORDED

To
The Post Master General
Dept. of Posts
Meghdoott Bhawan,
Guwahati-781001
Assam

Date: 10/12/2003

Sub:- My appointment as Group-D Vacancy

Sir,

With due respect I beg to lay the following few lines for your kind consideration and necessary action.

That Sir, I have been working as a substitute Casual Worker in the Basistha Post Office in place of Md. Jamsed Ali, EDDA. Since Md. Jamsed Ali got officiating promotion in Gr.D cadre, in his vacant post I was allowed to work as EDDA since March 2000 and as such I am continuing.

That Sir as per the scheme of temporary status my case is required to be considered for regularisation. It is pertinent to mention here that 2-3 of my colleagues have already been regularised and now they are enjoying the GR-D status. Apart from that at present there are number of vacant post in GDS scheme wherein my case is required to be considered of such posts.

I hope and trust that your honour would graciously be pleased to consider my case for regular employment in G.D or any GDS posts etc.

Thanking you,

Faithfully yours

Md. Ajnur Ali
R/O Helacha
Post Office Halacha
Dist:- Kamrup, Assam.

*Asstt.
Advocate.*

(including broken periods of service) during each of the two years of service referred to above.

[G.I., M.F., O.M. No. F. 8 (2)-Estt. (Spl) 60, dated the 24th January, 1961; M.H.A., O.M. No. 6/52/60-Estt. (A), dated the 16th February, 1961; No. 16/10/66-Estt. (D), dated the 2nd December, 1966; No. 14/1/68-Estt. (C), dated the 12th February, 1969 and D.P. & A.R., O.M. No. 49014/19/84-Estt. (C), dated the 26th October, 1984.]

3. Regularization of service of casual workers, not recruited through Employment Exchange before 7-5-1985, in Group 'D' posts

3.1. The services of casual workers may be regularized in Group 'D' posts in various Ministries/Departments, etc., subject to certain conditions, in terms of the general instructions issued by this Department. One of these conditions is that the casual workers concerned should have been recruited through the employment exchange. Sponsorship by the employment exchange being a basic and essential condition for recruitment under the Government, it has repeatedly been brought to the notice of the various administrative authorities that recruitment of casual workers should always be made through the employment exchange. It has, however, come to the notice of this Department that in certain cases these instructions were flouted and casual workers were recruited otherwise than through the employment exchange. Though these persons may have been continuing as casual workers for a number of years, they are not eligible for regular appointment and their services may be terminated any time. Having regard to the fact that casual workers belong to the weaker section of the society and termination of their services will cause undue hardship to them, it has been decided, as a one time measure, in consultation with the Director-General, Employment and Training, that casual workers recruited before the issue of these instructions may be considered for regular appointment in Group 'D' posts, in terms of the general instructions, even if they were recruited otherwise than through the employment exchange, provided they are eligible for regular appointment in all other respects.

3.2. It is once again reiterated that no appointment of casual workers should be made in future otherwise than through the employment exchanges. If any deviation in this regard is committed, responsibility should be fixed and appropriate departmental action taken against the official concerned.

[G.I., D.P. & T., O.M. No. 48914/13 24 East, (C), dated the 7th May, 1955.]

4. Ban on engagement of casual workers for duties of Group 'C' posts

There is a complete ban on engagement of casual workers for performing duties of Group 'C' posts and hence no appointment of casual workers should be made in future for performing duties of Group 'C' posts. If any deviation in this regard is committed, the administrative officer in charge in the rank of Joint Secretary or equivalent will be held responsible for the same.

[G.L. M.F., C.M. No. 49014 to 59-Est. (C), dated the 20th February, 1960.]

5. Payment of wages to unskilled casual workers in Archaeological Survey of India

It has been decided that the unskilled casual worker whose nature of work is the same as that of the regular employees may be paid at the rate of 1/30 of Rs. 750 plus DA for work of 8 hours a day with effect from 7-6-1988. The guidelines issued by the Department of Personnel and Training should be strictly observed. On a reference made to them, it has been clarified as under—

- (i) The persons on daily wages on regular nature of work should not be engaged. In case casual workers have been engaged to do duties of regular nature, they shall have to be paid at the minimum time-scale of pay *plus* DA for work of 8 hours a day.
- (ii) The casual workers are required to be paid for the day on which they actually perform duties.
- (iii) If the casual worker is called for duty on a holiday, he will have to be paid for that day. In case this holiday happens to be paid holiday for the casual worker that he will have to be allowed additional wages for the duty for that holiday.
- (iv) The practice of engaging a casual worker on his weekly off day should be avoided. The question of allowing paid weekly off to casual workers in the offices following five days week work pattern is under consideration of the Department of Personnel and Training.

As for revision of rates in respect of skilled labour is concerned, the matter is being examined separately and the orders will be issued shortly.

[G.I., Archaeological Survey of India, O.M. No. 27-1/86-Admn. III, dated the 15th December, 1988.]

IN THE DEPARTMENT OF POSTS.

1. Part-time and Full-time Casual Labourers.—It is hereby clarified that all daily wagers working in Post Offices or in RMS Offices or in Administrative Offices or PSDs/MMIS under different designations (mazdoor, casual labourer, contingent paid staff, daily wager, daily-rated mazdoor, outsider) are to be treated as casual labourers. Those casual labourers who are engaged for a period of not less than 8 hours a day should be described as full-time casual labourers. Those casual labourers who are engaged for a period of less than 8 hours a day should be described as part-time casual labourers. All other designations should be discontinued.

Substitutes engaged against absentees should not be designated casual labourer. For purposes of recruitment to Group 'D' posts, substitutes should be considered only when casual labourers are not available. That is, substitutes will rank last in priority, but will be above outsiders. In other words, the following priority should be observed:—

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What are
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What is the
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Can I com-
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(i) NTC Group 'D' officials. (Non-Teat Caligary)
(ii) EDAs of the same Division. (Extra-Department-Agents)
(iii) Casual labourers (full-time or part-time). For purpose of computation of eligible service, half of the service rendered as a part-time casual labourer should be taken into account. That is, if a part-time casual labourer has served for 480 days in a period of 2 years he will be treated, for purposes of recruitment, to have completed one year of service as full-time casual labourer).
(iv) EDAs of other divisions in the same Region.
(v) Substitutes (not working in Metropolitan cities).
(vi) Direct recruits through employment exchanges.

NOTE.—Substitutes working in Metropolitan Cities will, however, rank above No. (iv) in the list.

[G.I., Dept. of Posts, Lr. No. 65-24/88-SPB. I, dated the 17th May, 1989.]

2. Casual Labourers (Grant of Temporary Status and Regularization) Scheme.—In compliance with the directions of the Hon'ble Supreme Court a scheme was drawn up by this Department in consultation with the Ministries of Law, Finance and Personnel and the President has been pleased to approve the said scheme. The scheme is as follows:—

1. 'Temporary Status' would be conferred on the casual labourers in employment as on 29-11-1989 and who continue to be currently employed and have rendered continuous service of at least one year; during the year they must have been engaged for a period of 240 days (206 days in the case of offices observing five days week).

2. Such casual workers engaged for full working hours, viz., 8 hours including $\frac{1}{2}$ hour's lunch time will be paid at daily rates on the basis of the minimum of the pay-scale for a regular Group 'D' official including DA, HRA and CCA.

3. Benefit of increment at the same rate as applicable to a Group 'D' employee would be taken into account for calculating per month rate wages, after completion of one year of service from the date of conferment of Temporary Status. Such increment will be taken into account after every one year of service subject to performance of duty for at least 240 days (206 days in establishments observing five days week) in the year.

4. Leave entitlement will be one day for every 10 days' of work. Casual leave or any other kind of leave, except maternity leave, will not be admissible. No cashment of leave is permissible on termination of services for any reason or on the casual labourers quitting service.

5. Maternity leave to lady full time casual labourers will be allowed as admissible to regular Group 'D' employees.

6. 50% of the service rendered under Temporary Status counted for the purpose of retirement benefits after regularization as regular Group 'D' official.

7. Conferment of Temporary Status does not automatically mean that the casual labourers would be appointed as a regular Group 'D' employees within any fixed time frame. Appointment to Group 'D' vacancies will continue to be done as per the extant recruitment rules, which stipulate preference to eligible ED employees.

8. After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group 'D' employees for the purpose of contribution to General Provident Fund. They would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of this Department.

9. Their entitlement to Productivity-Linked Bonus will continue to be at the rate applicable to casual labourers.

10. Temporary status does not debar dispensing with the service of a casual labourer after following the due procedure.

11. If a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with.

12. Casual labourers may be regularized in units other than recruiting units also, subject to availability of vacancies.

13. For purpose of appointment as a regular Group 'D' official, the casual labourers will be allowed age relaxation to the extent of service rendered by them as casual labourers.

14. The casual labourers can be deployed anywhere within the recruiting unit/territorial circle on the basis of availability of work.

15. The engagement of the casual labourers will continue to be on daily rates of pay on need basis.

16. The conferment of temporary status has no relation to availability of sanctioned regular Group 'D' posts.

17. No recruitment from open market for Group 'D' posts except compassionate appointments will be done till casual labourers with the requisite qualification are available to fill up the posts in question.

Further action may be taken in regard to the casual labourers by each unit, as per the above-said scheme. This issues with the approval of Minister of Finance and concurrence of Integrated Finance, vide their Dy. No. 1232-FA-91, dated 10-4-1991.

[G.I., Dept. of Posts, Lr. No. 45-95-87-SPB. I, dated the 12th April, 1991.]

2. Such casual labourers may be allowed paid leave as and when they require, provided leave is available at their credit.

3. No substitute arrangements should be made on such occasions, since engagement of fresh casual labourers is not permissible.

4. Casual labourers conferred with temporary status are to be paid OTA at the existing OTA rates for casual labourers, if they are engaged for extra hours.

[G.I., Dept. of Posts, Ltr. No. 45-26/92-SPB. I, dated the 28th October, 1992.]

Clarification (4).—1. The service book of the casual labourers conferred with temporary status is required to be maintained as in the case of temporary Government employees.

2. Temporary status casual labourers are entitled to increment on par with the departmental officials on completion of one year of engagement for 240 days, i.e., the increment would be taken into account for calculation of wages with effect from 1-11-1990, for the casual labourers conferred with temporary status on 29-11-1989, if they have completed one year of service at least 240 days.

3. The services of temporary status casual labourers can be dispensed with in case of misconduct after giving due opportunity on the lines of those available to regular employees.

4. A ban on employment of casual labourers had been put to by the Government prior to 29-11-1989. Therefore, there should not be any casual labourer employed after 29-11-1989. If there are any, their full particulars may be furnished along with the circumstances under which they were taken and under whose orders.

5. Employment of substitutes against the leave vacancy or paid weekly off days of temporary status casual labourer is not permissible.

6. Casual labourers engaged in P & T dispensaries where the full working hours are less than 8 hours daily are not eligible for temporary status.

[G.I., Dept. of Posts, Ltr. No. 45-56/92, dated the 14th March, 1993.]

NOTE.—For the purpose of para. 3 above, the following procedure would be followed:—

Temporary status does not debar dispensing with the service of a casual labourer after following the due procedure.

If a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with.

[G.I., Dept. of Posts, Ltr. No. 45-56/92, dated 8th June, 1993.]

Clarification (1).—Further to Letter No. 45-95/87-SPB-I, dated 12-4-1991 (Order 2 above), it is hereby clarified that the scheme is effective from 29-11-1989 and hence the eligible casual labourers may be conferred temporary status and the benefits indicated in the above-said circular with effect from 29-11-1989.

2. Eligibility for weekly off to casual labourers continue to remain the same as before, viz., after 6 days of continuous work, they will be entitled to one weekly off. They will also be entitled for 3 paid National Holidays.

3. Leave salary to the casual labourers with temporary status will be paid at the rate of daily wages being paid to the casual labourers concerned.

4. Casual labourers who work in offices observing 5 days a week are not entitled to Paid Off on Saturday or Sunday. In other words, the weekly paid off after 6 continuous working days is permissible only to those Casual workers who work at the rate of 8 hours per day in establishments having 6 days a week.

5. The Scheme is also applicable to casual workers in the civil wing of this Department. It is not, however, applicable to any person working on casual basis in Group 'C' posts.

6. Vacancies of Casual labourers caused by their absorption in Group 'D' posts are not to be filled by recruiting fresh casual labourers. In other words, engagement of fresh casual labourers is not permissible as already reiterated time and again.

[G.I., Dept. of Posts, Ltr. No. 45-37/91-SPB. I, dated the 5th June, 1991.]

Clarification (2).—Attention is invited to the Department of Per. & Trg., OM, dated 7-6-1988, as per which engagement of fresh full time casual labourers is not permissible. In the said OM, it has also been made clear that where the work of more than one type is to be performed throughout the year but each type of work does not justify a separate regular employee, a multi-functional post could be created for handling these items with the concurrence of Ministry of Finance. The possibility of creation of multi-functional posts in offices for discharging the items of work each of which does not justify a full-time post may be explored in the first instance. In case, this is not found possible to entrust, part-time casual hands may be engaged as per the outlines contained in OM, dated 7-6-1988.

It is once again reiterated that the decision regarding engagement of fresh part-time casual hands should be taken with care and at a fairly high level so that the provisions of OM, dated 7-6-1988, are not diluted.

[G.I., Dept. of Posts, Ltr. No. 45-111/91-SPB. I, dated the 13th January, 1992.]

Clarification (3).—1. Casual labourers conferred with temporary status can accumulate leave up to a maximum limit of 240 days.

3. Regularization of part-time Casual Labourers as full-time.—If part-time casual labourers are working for five hours or more, it may be examined whether they can be made full-time by readjustment or combination of duties. However, there should be no engagement of fresh casual labourers.

[G.I., Dept. of Posts, Lr. No. 45-14/92-SPB. I, dated the 16th September, 1992.]

4. Entitled leave availed by temporary status casual labourers be treated as duty for grant of weekly-off.—As per the temporary status scheme, the casual labourers conferred with temporary status are entitled for one day's leave after every ten days of work. Therefore, this leave is to be treated as day of work for purposes of grant of weekly off. Hence they may be granted a weekly off after six days of continuous work including leave, if any, taken in between as per the above-said entitlement.

[G.I., Dept. of Posts, No. 45-14/92-SPB. I, dated the 16th September, 1992.]

5. Benefits to casual labourers on completion of three years service in temporary status.—In their judgment, dated 29-11-1989, the Hon'ble Supreme Court have held that after rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Group 'D' employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group 'D' employees on regular basis.

2. In compliance with the above-said directive of the Hon'ble Supreme Court it has been decided that the casual labourers of this Department conferred with temporary status as per the scheme circulated in the above-said circular No. 45-95/87-SPB. I, dated 12-4-1991, be treated at par with temporary Group 'D' employees with effect from the date they complete three years of service in the newly acquired temporary status as per the above-said scheme. From that date they will be entitled to benefits admissible to temporary Group 'D' employees such as—

- (1) All kinds of leave admissible to temporary employees;
- (2) Holidays as admissible to regular employees;
- (3) Counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary employees who are given temporary status and who complete three years of service in that status while granting them pension and retirement benefits after their regularization;
- (4) Central Government Employees' Insurance Scheme;
- (5) General Provident Fund;
- (6) Medical Aid;
- (7) Leave Travel Concession;
- (8) All advances admissible to temporary Group 'D' employees;
- (9) Bonus.

3. Further action may be taken accordingly and proper service record of such employees may also be maintained.

[G.I., Dept. of Posts, Lr. No. 66-9/91-SPB. I, dated the 30th November, 1992.]

6. Superannuation age for temporary status Casual Labourers.—The services of a temporary status Casual Labourer may be dispensed with after giving notice that he/she attained 60 years of age and since the retirement age is 60 years for regular Group 'D' employees, he/she cannot be retained further. One month's notice may be given before dispensing with the services of a casual labourer.

[G.I., Dept. of Posts, No. 45-48/92-SPB. I, dated the 23rd February, 1993.]

IN THE DEPARTMENT OF TELECOMMUNICATIONS

1. Regularization of Casual Labourers of Department of Telecom and conferment of temporary status.—1. A scheme for conferring temporary status on casual labourers who are currently employed and have rendered a continuous service of at least one year has been approved by the Telecom Commission. Details of the Scheme are furnished in the Annexure.

2. Immediate action may be taken to confer temporary status on all eligible casual labourers in accordance with the above Scheme.

3.1. Instructions were issued to stop fresh recruitment and employment of casual labourers for any type of work in Telecom Circles. Districts. Casual labourers could be engaged after 30-3-1985, in Projects and Electrification Circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. According to the instructions subsequently issued, fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also should not be resorted to.

3.2. In view of the above instructions normally no casual labourers engaged after 30-3-1985, would be available for consideration for conferring temporary status. In the unlikely event of there being any cases of casual labourers engaged after 30-3-1985, requiring consideration for conferment of temporary status, such cases should be referred to the Telecom Commission with relevant details and particulars regarding the action taken against the officer under whose authorization approval the irregular engagement/non-retrenchment was resorted to.

3.3. No casual labourer who has been recruited after 30-3-1985, should be granted temporary status without specific approval from this office.

4. The Scheme furnished in the Annexure has the concurrence of Member (Finance) of the Telecom Commission, vide No. SMF 78 89, dated 27-9-1989.

[G.I., Dept. of Telecom, Circular No. 202-10-89-STN, dated the 7th November, 1989.]

CASUAL LABOURERS (GRANT OF TEMPORARY STATUS AND
REGULARISATION) SCHEME.

NO.66-52/92-SPB/I

dated 1.11.95

I am directed to refer to the scheme on the above subject issued by this office vide letter No.45-95/87 SPB-I dated 12.4.91 and 66-9/91-SPB-I dated 30.11.92 as per which full time casual labourers who were in employment as on 29.11.89 were eligible to be conferred "temporary status" on satisfying other eligibility conditions.

The question of extending the benefit of the scheme to those full time casual labourers who were engaged/recruited after 29.11.89 has been considered in the office in the light of the judgment of the CAT Earmakulam Bench delivered on 13.3.95 in OA No.750/94.

It has been decided the full time casual labourers recruited after 29.11.89 and up to 10.9.93 may also be considered for the grant of benefit under the scheme.

This issue with the approval of I.S. and F.A. vide DY No.2423/95 dated 9.10.95.

Referred
John
10/10/95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 188 OF 1991

Date of decision: This the 27th day of July 1995

The Hon'ble Justice Shri M.G. Chaudhuri, Vice-Chairman

The Hon'ble Justice Shri C.L. Sankeyine, Member (Administrative)

The Hon'ble Shri C.L. Sankeyine, Member (Administrative)

Shri Kailash Das
Stamp Vendor (since discharged)
Bharatmukhi, Guwahati.

.....Applicant

By Advocate Shri B.K. Sharma

- versus -

1. Union of India, represented by
the Secretary to the Government of India
Ministry of Communication,
New Delhi.

2. The Director General (Posts),
New Delhi.

3. The Chief Post Master General
Assam Circle,
Guwahati.

4. The Sr. Superintendent of Post Offices,
Guwahati Division,
Guwahati.

5. Sub Postmaster, Bharatmukhi,
Guwahati. Respondents

By Advocate Shri A.K. Choudhury, Addl. C.G.S.C.



SDS

CHAUDHARI, J. V.C.

Mr B.K. Sharma for the applicant.

Mr A.K. Choudhury, Addl. C.G.S.C., for the respondents.

The applicant belongs to SC Community. By order dated 25.4.1988 issued by the Sub Postmaster, Bharalumukh, Guwahati, the applicant was appointed as Stamp Vender on adhoc basis. The relevant clause in the order reads thus: "The following orders are issued to have immediate effect in the interest of service..... Hence Shri Kailash Das an out-sider is appointed as Stamp Vender and he will relieve Shri A. Rahman as such." That appears to have been so stated because Rahman who was a Stamp Vender was temporarily appointed as Postmaster in the temporary vacancy of one Manik Ch Das. The order stipulated that the order would be terminated at any time without any reason whatsoever and the appointed will have no further claim on the post for continuation. The applicant continued to work as Stamp Vender in pursuance of the said order in the Sub Postoffice, Bharalumukh, from 5.11.1983 till 31.3.1990 in the following spells:

- i) 5.11.1983 to 14.2.1984
- ii) 5.11.1984 to 20.6.1986, and
- iii) 25.4.1988 to 31.3.1990.

That is also borne out by the certificate issued by the Sub Postmaster dated 31.3.1990 (original perused) and statement in para 9 of the written statement. It is thus apparent that in the last two spells the

letter

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applicant has worked continuously for more than one year.

2. The service of the applicant was terminated orally and it was certified vide Annexure-5 dated 31.3.1990 that he had relinquished the charge. Although the applicant filed representations against that termination he was not granted any relief. Hence he filed the instant original application on 11.10.1991. He prays that the oral order of termination and Annexure-5 be set aside and the respondents be directed to regularise his service and permanently absorb him as Stamp Vender with retrospective effect.

3. The respondents resist the application. They contend that the applicant was neither an extra departmental official nor a regular employee, but had worked as substitute of A. Rahman and his appointment ceased automatically on A. Rahman having resumed his duty. They place reliance on EDAs Service and Conduct Rules, 1964 and General Instructions under the relevant rules, namely, Rule 5. They also rely on Rule 2. They further contend that as the applicant was not a regular employee of the department of Posts the Tribunal has no jurisdiction to entertain his grievance and the application is also not within the period of limitation. The respondents also contend that as the applicant was a substitute and as no notice of termination is required to be given to a substitute it was not necessary to give notice of termination to the applicant for terminating his

service.

4. It is true that as the termination was effected on 31.3.1990 and the application was filed on 11.10.1991 it would appear to be filed beyond the prescribed period of limitation of one year. However, the applicant has stated that he had filed representations although he has not produced any copies of the said representations prior to the one filed on 28.2.1991. However, it appears that even prior to the termination the applicant had been representing for regularisation. We say so on the basis of original letters shown to us by Mr. B.K. Sharma, learned counsel for the applicant. That apart, the respondents have admitted in para 11 of the written statement that the representations were received from the applicant, but according to them there is no scope for their consideration under the existing rules of the department. Under the circumstances we overrule the objection of limitation.

5. The contention relating to lack of jurisdiction in the Tribunal to entertain the application has no substance in it inasmuch as even according to the written statement the appointment of the applicant was governed by EDAs Conduct and Service Rules. That apart, the order of appointment does not read as a contractual appointment, but as an appointment on adhoc basis to a post in the department. It, therefore, becomes a service matter and is within the purview of this Tribunal. Hence the

said objection is rejected.

6. In the representation, Annexure-B, the applicant had referred to a letter of the Directorate containing the instructions that substitutes who were on the roll on 5.2.1986 and had put in 240 days service in a year on that date should not be discharged. The respondents have not disputed the existence of that letter. However, a copy of that letter is not produced. Mr B.K. Sharma drew our attention to another circular issued by the office of the Postmaster General, Assam Circle, dated 19.4.1989 (No. Staff/13-22/88/Casual Labour/Rlg/corr), which refers to the letter of the Director No.45-95/87-SPB.I dated 10.3.1989 issued on the subject of absorption of casual labourers in the light of the Supreme Court Judgment which also stated that casual labourers who were having more than one year of service as on 5.2.1986 should not be discharged from service until further orders and these instructions were being issued in compliance of the Supreme Court Judgment dated 26.9.1988. A copy of that circular is available in the record of O.A.No.163/89. However, more significantly Mr B.K. Sharma produced a circular issued by the Chief Postmaster General, Assam Circle, on the subject of engagement of persons to work as substitutes bearing No.B/R-4 dated 12.2.1991. It reproduces the letter of the Directorate dated 28.8.1990, which contains the instructions as follows:

"Employment of substitutes was permissible in special circumstances in regard to vacancies in Postman's cadre, but it is seen that in some circles substitutes were being employed against Gr. D posts on a well. This was not correct if such

Ans

a practice obtains in your circle, it should be discontinued forthwith. However, if there are existing substitutes against Postman vacancies or gr. D vacancies who were on the rolls on 5.2.86 and had put in 240 days of service in a year on that date, they should not be discharged."

Although the circular relates to vacancies in the post of Postman and the applicant was appointed as Stamp Vendor and not in the post of Postman, the principle followed in the light of Supreme Court Judgment as reflected in the above noted circulars should also apply to persons like the applicant who may have been appointed as Stamp Vendor. In this connection it is pertinent to note that in the written statement it has been repeatedly asserted that the applicant was a substitute although contradictory statements have also been made that he was an outsider and protection is not available to extra departmental employee. The aforesaid policy, therefore, should apply to the applicant as a substitute. The EDA Conduct and Service Rules define an employee as a person employed as an Extra Departmental Agent and also includes an Extra Departmental Stamp Vendor. Admittedly, the applicant was an outsider when he was appointed in the sense that he was not in the service of the Department till then. The said category has necessarily to be understood as same as extra departmental employee. The word extra would indicate a person who is not a member of the department and was, therefore, extra. The applicant being an outsider and having been appointed as substitute in the post in the department he accorded to the definition of extra departmental Stamp Vendor under the said rules. The termination of

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the service of the applicant thus appears to be contrary to the spirit of the policy being followed by the department in the light of the judgment of the Supreme Court and thus cannot be sustained in law.

7. The question is also directly covered by the Full Bench decision of the Central Administrative Tribunal rendered at Hyderabad Bench in the case of Sakkubai and N.J. Ramulu -vs- The Secretary, Ministry of Communications etc. and four others, reported in Full Bench Judgment of CAT 1991-94 (Vol.3) 209. That was also a case of casual labourers in the Postal Department who had sought conferment of temporary status pending absorption in Group 'D' posts. The provisions of the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme" were examined and it was held that the grant of temporary status and consequential benefits envisaged in the scheme applied to casual labourers and the respondents were directed to confer upon the applicants (in that case) temporary status in Group 'D' posts pending their absorption in Group 'D' posts in accordance with the scheme. The Full Bench was pleased to uphold the said view taken by the Ernakulam Bench of the Central Administrative Tribunal. It was observed that the view taken by the Ernakulam Bench was eminently just and equitable. It was also observed that the object of the Scheme is to confer temporary status upon causal labourers who have been rendering service for long periods without any security of tenure.

8. Although the applicant in the instant case has not prayed in terms for being conferred temporary status, he will have to pass through that stage before being considered for regularisation under the provision of the aforesaid Scheme. Under the Scheme temporary status would be conferred on the casual labourers in employment as on 29.11.1989 and who continue to be currently employed and have rendered continuous service of atleast one year; during the year they must have been engaged for a period of 240 days (206 days in case of offices observing 5 days weeks). The applicant would in our view accord to the description of being a casual labourer for the purpose of extending him the benefit of the Scheme. The very nature of his appointment by whatever label it may be described by the respondents, it not being a regular appointment even on temporary basis to a post can also be described as casual engagement. The manner in which the same has been termed by the respondents also is in consistence with that position. The applicant clearly appears to have worked continuously for more than 240 days in each of the two spells as already mentioned earlier. We, therefore, hold that the case of the applicant is required to be considered by the respondents under the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989."

9. In the result the application is allowed and the respondents are directed to confer upon the applicant temporary status in Group 'D' post from 29.11.1989, together with consequential benefits.

Shri [Signature]

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subject to following directions and thereafter consider his absorption in Group 'D' post in accordance with "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme." The applicant, however, will not be entitled to any arrears of emoluments arising out of the above said direction till the date of filing the O.A., i.e. 11.10.1991. The above directions shall be complied with by the respondents within a period of four months from the date of receipt of the copy of the order. Consistently with the above directions the oral order of termination of the applicant from service with effect from 31.3.1990 is set aside. The consequential order, Annexure-5, since is exhausted no order in that respect. The respondents may pass such consequential orders as may be necessary to give effect to above directions.

10. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMIN)

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महिला

Shivani

1/X

Section Officer (J)

महिला एकाडमी (महिला अधिकारी)

Central Administrative Training College

पुस्तकालय

प्रशिक्षण विभाग

महिला एकाडमी

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6

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Criminal Application No. 40 of 1996.

Date of Order : This the 28th day of August, 1998.

Justice Shri D.N.Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

Smt Anima Kalita
 C/O Late Chandradhar Kalita
 P.O. Kamakhya, Guwahati,
 at present working as EDDA
 under the respondent No.4

... Applicant

By Advocate Shri B.K.Sharma & S.Sarma.

- Versus -

1. Union of India
 represented by the Secretary
 to the Government of India,
 Ministry of Communication,
 New Delhi.
2. The Director General of Posts,
 New Delhi.
3. The Chief Post Master General,
 Assam Circle, Guwahati.
4. The Sr. Superintendent of Post Offices,
 Guwahati Division, Guwahati-1.
5. Sub Post Master,
 Kamakhya Post Office,
 Kamakhya, Guwahati-10.
6. Harapati Patewari,
 C/O Lambadar Deka,
 Fatasil Ambari, Near Kali Mandir,
 Guwahati.

... Respondents.

By Advocate Shri C.Sarma, Addl.C.G.S.C
 for respondents No.1 to 5, and Shri H.Deka
 for respondent No.6.

ORDER

G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

The applicant works as an Extra Departmental delivery Agent (EDDA for short) in Kamakhya Post Office, Kamakhya, Guwahati-10. The Assistant Superintendent of Post Offices, Guwahati West Sub-Division issued an order No.A-1/Kamakhya dated 27.11.1995 terminating the work of the applicant with immediate effect. The Assistant Superintendent of Post Offices,

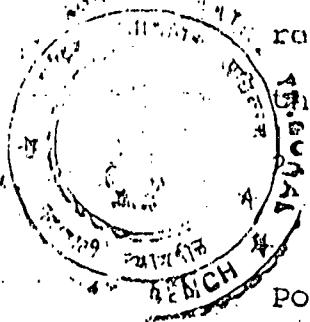
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Advocate.

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Guwahati West Sub-Division, Guwahati also issued order under Memo No.A-1/Kamakhya dated 29.2.1996 making provisional appointment of Shri Harapati Patowary, respondent No.6, to the post of Extra Departmental Delivery Agent of Kamakhya Post Office pending finalisation of disciplinary proceeding against Shri Bipin Chandra Mahanta or regular appointment whichever is earlier. The applicant felt aggrieved with the aforesaid orders and had submitted this Original Application. In this application the applicant prays that the aforesaid orders be set aside and quashed. She also prays for directions to the respondents to grant her temporary status leading to regularisation of her service and not to appoint any outsider to the post of EDDA of Kamakhya Post Office in her place. The respondents have contested the application. The official respondents as well as the respondent No.6 have submitted their written statements.

The brief facts of the case are :-


Shri Bipin Ch. Mahanta was the regular EDDA of Kamakhya Post Office. He availed leave from 24.8.94 to 30.11.94 and nominated the applicant, Smt Anima Kalita, to work as substitute during his leave period. Mahanta however did not return to his duty after expiry of leave. The applicant continued from 1.12.94 to 8.12.94. On 9.12.94 the Assistant Superintendent of Post Offices, Guwahati West Sub Division issued the order No.A-1/Kamakhya dated 9.12.94 permitting the applicant to work as EDDA, Kamakhya till joining of Shri Bipin Mahanta who was absenting from duty without authority, pending further action as deem fit. On the strength of the order the applicant continued to work as EDDA in the said Post Office till the terminating order dated 27.11.1995 was issued. However, it has been stated that even after the said order dated 27.11.95 the applicant continued to work as EDDA in the Post Office.

even on the date of filing of this original Application on 12.3.96. She is now continuing as EDDA by virtue of an interim order dated 13.3.96. On 12.12.95 the Assistant Superintendent of Post Offices notified to the Employment Exchanges at Bharatpur and Dhubri for sponsoring names of candidates to fill up the vacant post of EDDA at Kamakhya Sub Post Office which had fallen vacant temporarily. Four names were sponsored and Shri Harapati Patowari, respondent No.6, was selected and appointed. Annexure-5 order dated 29.2.1996 was issued in his favour. The name of the applicant was not communicated by the respondents to the Employment Exchanges and the Employment Exchanges also did not sponsor her name.

3. On hearing the learned counsel on both sides the first question to be considered is whether the applicant is entitled to temporary status which would lead to regularisation of her service and absorption in a regular establishment. Temporary status is granted to casual labourers. The contention of the respondents is that the applicant was only a substitute of a regular EDDA and therefore she is not entitled to claim for regular absorption in the department. On perusal of the relevant rules we understand what a substitute is in this context. A regular EDDA when he is proceeding on authorised leave or absence has to provide a substitute and arrange that his work is to be carried on by the substitute. This arrangement is however, with the written approval of the leave sanctioning authority. The substitute who performs the work receives the allowance/remuneration payable to the regular EDDA for such duration. The substitute is an agent of the EDDA concerned and the original EDDA is liable for action committed by the substitute provided by him. The regular EDDA may also be on unauthorized absence but he provided the substitute without the approval of the competent

authority. The rules/instructions also provide that if the absence from duty of the regular EDDA is likely to be indefinite, regular appointment of EDDA should be made immediately by appointing authority but the person so appointed need not necessarily be the substitute. Bipin Mahanta was granted leave for the period from 24.8.1994 to 30.11.1994 and for this period he had made arrangement and provided a substitute, namely, the applicant. Thus for this period the applicant was a substitute. Mahanta did not return to duty after expiry of leave and he had not made any further arrangement for a substitute for the period after the expiry of his leave. The applicant cannot therefore be held to be a substitute of the original EDDA after the expiry of leave of Mahanta. After 19.12.1994 specially the situation had changed completely. The applicant was not a substitute and she was not appointed as an EDDA but she was simply permitted to work as EDDA Kamakhya Sub Post Office till joining of Shri Bipin Ch. Mahanta who is absent from duty without authority, pending further action as deemed fit. Her service was terminated with immediate effect on 27.11.1995 vide order dated 27.11.1995. Yet the respondents had continued to obtain service from her till the date of submission of this original Application. In the above facts and circumstances we are of the view that the applicant was not a substitute after the expiry of leave of Mahanta. Thereafter she was not appointed against the post of EDDA Kamakhya Sub Post Office. Nevertheless she was permitted by the respondents to do their works in the Sub Post Office on payment. In our opinion such arrangement is of the nature of casual employment. The applicant had worked under such situation from 1.12.1994 till 12.3.1996. Thus the applicant had put in 240 days continuous service in a year. In the circumstances we direct the respondents to consider conferring

temporary status to the applicant as may be admissible under the relevant rules of service. The applicant is at liberty to agitate further before appropriate authority if she is aggrieved by the order of the respondents. The next question is whether the termination order dated 27.11.1995 is sustainable. As already mentioned herabove the applicant was no longer a substitute after 30.11.1994 and by the order dated 9.12.1994 she was not appointed as EDDA or was allowed to work as a substitute. No doubt she was permitted to work as EDDA till joining by Shri Bipin Ch. Mahanta. By this order no vested right of the applicant to the post of EDDA was created. Further, the aforesaid arrangement was without observing formalities and it had not subjected the applicant to the ED Agents (Conditions and Services) Rules 1964. Moreover, Mahanta had remained absent for a long time. In such circumstances it was administratively necessary for the respondents to bring to an end the arrangement and, in our view, the respondents were within their rights to terminate the arrangement and that they had done so bonafide. We do not find any reason to justify interference with the order of termination. The termination however is to be considered only as an artificial break which will not forfeit the past services of the applicant from being considered for the purpose of granting her temporary status. As stated earlier the termination has immediate effect but even after the order was issued the applicant continued to work. In the above mentioned facts and circumstances we direct the respondents to retain the applicant as a casual employee in any other capacity under the control of respondent No.4 without monetary loss and to consider granting her temporary status in due course.

4. In view of the findings and directions above we consider that it is not necessary to go into the question of legality or otherwise of the appointment of respondent

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No. 6 to the post of EDDA Kamakhya Sub Post Office.

5. The application is disposed of in the lines as indicated above.

No order as to costs.



Sd/- VICE CHAIRMAN
Sd/- MEMBER (ADMIN)

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প্রতিক্রিয়া

Section Officer (1) 3/1970
নিয়ন্ত্রিত নিয়ন্ত্রিত নিয়ন্ত্রিত নিয়ন্ত্রিত
Central Administrative Tribunal
কেন্দ্রীয় নিয়ন্ত্রিত নিয়ন্ত্রিত
সুবাহান বেন্চ, গুৱাহাটী
পূর্ব পার্শ্ব, গুৱাহাটী

162/9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 179 of 2001

Date of Order: This the 6th Day of February, 2002.

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

1. Smti Anima Kalita,
Presently working as Safaiwala,
Kamakhya Sub-Post Office, Guwahati-781010 ... Applicant.

By Advocate Mr.B.K.Sharma, Mr.S.Sarma, Mrs. U.Das
-vs-

1. Union of India,
represented by the Secretary to the
Government of India, Ministry of
communication, New Delhi.
2. The Director General of Posts, New Delhi.
3. The Chief Postmaster General, Assam Circle,
Guwahati.
4. The Senior Superintendent of Post Offices,
Guwahati Division, Guwahati-1
5. The Sub Post Master, Kamakhya Post Office,
Guwahati-10.

By Advocate A.Deb Roy, Sr.C.C.S.C. *** Respondents

O R D E R.

CHOWDHURY, J(V.C.):

This is the second round of litigation. The applicant Kalita was the regular Extra Departmental Delivery Agent (EDDA) in Kamakhya Post office, Kamakhya. He went on leave from 24.8.94 to 30.11.94. The applicant ^{was} allowed to work as substitute during his leave period. The regular incumbent did not return to his duty after expiry of leave. The applicant continued from 1.12.94 to 8.12.94. On 9.12.94 the Assistant Superintendent of Post Offices, Guwahati West Sub Division issued the order No. A-1/Kamakhya dated 9.12.94 permitting the applicant to work as EDDA, Kamakhya till joining of Shri Bipin Bhanta who was absenting from

detained



Advocate.

contd/-

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duty without authority, pending further action as it deem fit. Thus the applicant continued to work as EDDA even after termination order dated 27.11.95. The applicant assailed the same before the tribunal by way of O.A. which was registered in O.A. No. 40 of 96. On consideration of the materials on record the Tribunal held that the applicant was not appointed against the post of EDDA, Kamakhya Sub-Post Office, she was permitted by the Respondents to do their works in the Sub Post office, for a particular period as Casual Employment. The applicant had worked under such situation from 1.12.1994 till 12.3.1996. Thus the applicant had put in 240 days continuous service in a year. The Respondents were accordingly directed to consider her case for confinement of temporary status to the applicant as may be admissible under the relevant rules or scheme. The Tribunal did not interfere with the order of termination, but the said termination order was treated as an artificial break which would not forfeit the past services of the applicant from being considered for the purpose of granting her temporary status. The Respondents were also directed to retain the applicant as a Casual employee in any other capacity under the control of Respondent No.4, the Senior Superintendent of Post Office, Guwahati Division, Guwahati without causing any monetary loss and to consider her case granting temporary status in due course. The applicant drew the attention of the matter to the authority in pursuant to the order of this Tribunal, the applicant had been removed from the post of EDDA and she was absorbed in part time Safaiwala post with pay of EDDA with present pay protection with the order dated 22.9.98 since there was delay in confinement of temporary status and she

was not paid the revised pay and DA with effect from January 1999, coupled with her 8 days duty allowance with effect from 6.10.98 to 13.10.98 and other consequential benefits. The applicant also submitted Legal Notice before the Chief Postmaster General, Assam Circle, Guwahati. Thereafter the Respondents by communication dated 23.2.99 informed the applicant that she was relieved on 6.10.98 as EDDA and joined on 14.10.98 as Safaiwala. Since she did not perform any duties for the period with effect from 7.10.98 to 13.10.98 and thereafter the Respondents by communication dated 23.2.99 informed the applicant that she was relieved on 6.10.98 as EDDA and joined on 14.10.98 as Safaiwala. Since she did not perform any duties for the period with effect from 7.10.98 to 13.10.98 and therefore she was not entitled for any allowance.

The applicant submitted representation dated 9.4.99 to the Senior Supdt. of Post Offices, Guwahati Division, Guwahati praying for revised pay scale and payment of duty allowance for eight days with effect from 7.10.98 to 13.10.98 for redressal of the long pending grievance. Failing to get appropriate remedy the applicant thus moved this Tribunal seeking for a direction to give her revision of pay including the pay for the period with effect from 6.10.98 to 13.10.98.

The Respondents authority in his written statement stated that the applicant was conferred with the Temporary Status with effect from 22.9.98. She was absorbed in part time Safaiwala post with pay of EDDA. Her claim for allowance for eight days from 7.10.98 to 13.10.98 was refused on the basis that she was not holding any post in the department.

during the period. Accordingly the applicant was relieved from the post of EDDA on 6.10.98 and joined as Safaiwala on 14.10.98. She remained absent with effect from 7.10.98 to 13.10.98 wilfully. She was therefore not entitled to get the pre-revised scale for the said period. The Respondents also stated that she had been given the pre-revised protection of pay which was ~~not~~ ^{not} ~~extended~~ since the Tribunal did not direct the Respondent No.4 to allow her future revision of pay and DA, vide order dated 28.8.98, therefore, the same was not granted.

I have heard Mr. S. Sarmi learned counsel for the applicant and Mr. A. Deb Roy, Sr. C.G.S.C. for the Respondents. There is no justification for not granting the revised pay to the applicant. The revision of pay is equally applicable to all the employees. No direction is required from the Court or Tribunal to grant any relief to give effect to pay revision. For the other part of the reliefs, there is no dispute that the applicant was not paid her salary for the period from 6.10.98 to 13.10.98. As per order of this Tribunal the Respondents were directed to retain the applicant as Casual employee in any other capacity under the Respondents without monetary loss. The Respondents were no justified in treating the period as wilful absence. It was duty of the Respondents to engage her in service.

The applicant is now conferred with temporary status. The Respondents are directed to provide her all the benefits that has flown from the scheme of Casual Labour (Grant of Temporary status and Regularisation) Scheme and to release her arrear pay as per the revised rate with effect from January 1999 and also eight days duty allowance for the period from

6.10.98 to 13.10.98 and the revised pay scale of the EDDA with DA and all other benefits. The Respondents shall complete the exercise within two months from the date of receipt of this order.

In the facts and circumstances the application is allowed to the extent indicated above. No costs.

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Vice-Chairman

Certified to be true (S).
S. M. S. (Signature)

13/10/02

AKP (Signature)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the Matter of:-

D.A. No.86 of 2004

Ajnur Ali

..... Applicant

-VS-

Union of India & Ors.

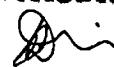
..... Respondents

WRITTEN STATEMENT FOR AND ON BEHALF OF
RESPONDENT NOS.1, 2 & 3.

I Sr. Supdt. of Post Offices,
Guwahati Division, Guwahati-1, do hereby solemnly affirm and
say as follows:-

1. That I am the Senior Superintendent of Post
Offices, Guwahati Division, Guwahati-1 and as such fully
acquainted with the facts and circumstances of the case. I
have gone through a copy of the application and have
understood the contents thereof. Save and except whatever is
specifically admitted in this written statement the other
contentions and statement may be deemed to have been denied.
1

Attested



Advocate.

I am authorised to file the written statement on behalf of all the respondents.

2. That the respondents beg to place the brief history of the case as follows:-

(i) That the applicant is an outsider and he was provided to work as substitute by Sri Chandiram Baruah, GDS DA Beltola SD and by Md. Jamshed Ali GDS DA Basistha 50.

(ii) That in the year 2000-01 a post of Group-D post had fallen vacant in a Post Office under the unit of SDI (P) Guwahati East Sub-Division and to manage the work of vacant post one Sri Chandiram Baruah GDS DA Beltola PO was ordered to provide suitable substitute in his place for that period on his full responsibility as per GDS (Service and conduct rule) 2001 Rule-7.

(iii) Hence the applicant was provided to work as substitute by Sri Chandiram Baruah GDS DA Beltola PO and on return of Sri Baruah GDS staff the work of the applicant was (substitute) automatically discontinued. The applicant was provided to work as substitute on his full responsibility of the original incumbent as per the GDS (service and conduct) rule 2001.

3. That with regard to the statements made in paragraph 1 of the application, the respondents beg to state that the applicant worked as substitute in place of Original incumbent on full responsibility of the original incumbent.

It may be mentioned here that the applicant is an outsider and is not covered by any Departmental scheme, so the question of considering representation does not arise.

4. That the respondents have no comments to the statements made in paragraph 2, 3 & 4.1 of the application.

5. That with regard to the statement made in paragraph 4.2 of the application, the respondent beg to state that the applicant is an outsider and he was provided to work as substitute on full responsibility of the original incumbent and on return of the original incumbent the service of the applicant was automatically discontinued.

In this regard the respondents beg to state that as per GDS (Conduct and Employment) Rule 2001, whenever any vacancy arises in Group-D, Postman, Packer etc. for short period duration, as per provision of GDS Rule 2001 senior GDS staff are ordered to officiate in such vacant post for short duration, in such cases the original incumbent will have to provide a suitable substitute in his place on his full responsibility. In this case the applicant was provided to work as substitute by Jamshed Ali GDS DA Basistha SD who has been ordered to officiate as Group-D.

Copies of the GDS Rule regarding the appointment of substitute is annexed herewith as Annexure-A.

6. That with regard to the statement made in paragraph 4.3 of the application, the respondents beg to state that the applicant was never appoint in any post as GDS DA at Basistha SO. As already mentioned in the forgoing paras the applicant was provided to work as substitute by Jamshed Ali GDS DA Basistha SO.

As per Rule 7 & DG instruction (4) if the vacancy in the regular post (departmental) against which GDS DA is appointed is for a short, only then he may provide his own substitute, subject to the same condition as in the case of an GDS proceeding as-laws. On the expiry of the period the agency service of the substitute stands automatically terminated.

7. That with regard to the statement made in paragraph 4.4 of the application, the respondents beg to state that as the applicant was provided to work as substitute in question of considering representation does not arise.

8. That with regard to the statements made in paragraph 4.5 of the application, the respondents beg to state that as it is mentioned in the forgoing paras that the applicant was an agent (substitute) of the regular GDS DA of Basistha SO therefore, the applicant is not covered under the scheme annexed in the application by the applicant as Annexure-3.

9. That with regard to the statements made in

paragraph 4.8 to 4.12 of the application, the respondent deny the contention made therein. The respondents beg to annex one judgment of Hon'ble High Court, Calcutta dated 9.6.05, Circuit Bench Port Blair in UPCT No.58/2003 upholding the order dated 10.03.2003 of the Hon'ble Tribunal Calcutta. It is made clear that substitution of Gramin Dak Sevak have no right to take absorption in any post or in any capacity.

10. That with regard to the statement made in paragraph 5 to 9 of the application, the respondents beg to state that the applicant is not entitle to any relief sought for and in view of the forgoing facts and as such the application should be dismissed with cost.

VERIFICATION

I, , Sr.Supt. of Post Offices Guwahati Division, Guwahati-1, being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs of the applications are true to my knowledge and belief, those made in paragraph be matter of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any materials facts.

I sign this verification on this ... the .. th day of

DEPONENT

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 86 of 2004

Date of Order: This the 11th day of May, 2005.

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

Md. Ajnur Ali
Son of Md. Abdul Ali
Resident of Vill. Barpathar
C/o Md. Khasnur Ali
P.O. Basistha
Pin - 781 029.

... Applicant

By Advocates Mr. S. Sarma and Ms. B. Devi.

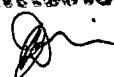
Versus -

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Communication
Department of Post
Dak Bhawan, New Delhi.
2. The Chief Post Master General
Department of Post
Meghdoot Bhawan
Guwahati - 1.
3. Sub Divisional Inspector of Post Offices
East Sub Division
Guwahati - 1.

... Respondents.

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

Attested



Advocate

ORDER (ORAL)

SIVARAJAN J. (V.C.)

The applicant was engaged to work as nominee EDDA as per nomination made by one Mr. Chandi Ram Baruah, GDS DA Beltola SO and by Md. Jamshed Ali, GDS DA Basistha SO from 01.03.2000 evidenced by Annexure - 1. Applicant was the son-in-law of Md. Jamshed Ali. He worked as such till 30.11.2003. When Mr. Chandi Ram Baruah joined on duty, the applicant's services were discontinued. Immediately thereafter, the applicant made representation dated 10.12.2003 (Annexure - 2) seeking for reinstatement in service. The said request has not yet been considered.

According to the applicant, there is a scheme (Annexure - 3) granting of temporary status to casual workers and that the applicant fulfills all the eligibility criteria. The applicant also relied on certain orders of this Tribunal (Annexures - 5 to 7), which according to the applicant are in his favour. The applicant wants assignment of temporary status and regularization of his service as EDDA under the Respondents.

2. The Respondents have filed their written statement in which it is stated that the applicant is not a regular employee under the Respondents and that as noted in Annexure - 1 he was nominated to work as a substitute EDDA as provided under GDS (Service and Conduct) Rules 2001. It is also stated that immediately when Mr. Chandi Ram Baruah had assumed the charge, the applicant was sent out which is strictly in accordance with law. The Respondents have further stated that the

lpt

scheme Annexure - 3 is not applicable in so far as the regularization to the post of EDDA is concerned.

3. We have heard Mr. B. Dewi, learned counsel for the applicant and also Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the Respondents.

4. The Counsel for the applicant referring to the scheme and decisions of this Tribunal strongly contended that since the applicant had worked as EDDA w.e.f. 01.03.2000 to 30.11.2003, he is entitled to be regularized in the said post. Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents, on the other hand, submits that there is no provision in the relevant Rule for regularization of the substitute EDDA.

5. So far as the question of regularization of a substitute EDDA is concerned the same is no longer res integra. The Supreme Court in U.O.L. & Ors. V. Debika Guha & Ors. (Civil Appeal No. 3080 of 2000 decided on 28.04.2000) 2000 (3) ATJ 364 considered the matter thus:

"The grievance before us in this appeal is in relation to an order passed by the Central Administrative Tribunal, Calcutta Bench holding that substitute Extra Departmental Agents of the Postal Department who have worked for 180 days or more in one calendar year continuously can claim to be regularised. The Tribunal gave a further direction that the Appellants should determine on the basis of available records the period for which the Respondents have worked continuously and if such period in any calendar year exceeds 180 days, neglecting short artificial breaks, should absorb them in future vacancies, provided they satisfy the eligibility conditions. When similar matters came up before this Court in Writ Petition No. 1624 of 1986 and connected with this, the Court held that the claim on behalf

✓ of substitutes ordinarily is not entertainable but made it clear that, however, if they have worked for long periods continuously, their cases could be appropriately considered by the department for absorption. When this Court has already decided that there cannot be a legal claim on the basis that they have worked for 180 days continuously, it may not be necessary for us to consider that aspect of the matter. Indeed, if it is shown that they have worked for long periods continuously, it will be for the department to consider the same whether that was a proper case for absorption or not and pass appropriate orders. Thus, we think the whole approach of the Tribunal is incorrect in the light of the decision of this Court. Therefore, we set aside the order passed by the Tribunal. However, it is open to the Appellants to examine the case of the Respondents, if they have worked for long period, to absorb them, as the case may be. The appeal is allowed."

6. Thus the applicant has no legal right to claim that his service has to be regularised or that he must be absorbed. However, since the applicant has put in about 4 years continuous service his case could be appropriately considered for absorption as observed by the Supreme Court (Supra).

7. The Scheme Annexure - 3 according to the applicant gives some benefits to substitute EDDAs. As per Government of India, Department of Posts, Letter No. 65-24/88-SPB.I dated 17.05.1989 substitutes engaged against absentees should not be designated casual labourer but for purposes of recruitment to Group 'D' posts, substitutes should be considered only when casual labourers are not available and that substitutes will rank last in priority but will be above the outsiders. (Casual labourers (Grant of Temporary Status and Regularisation) Scheme). It is with reference to this Scheme the Tribunal had decided the Scheme).

9/9/

case of similarly situated persons in Annexures - 5, 6 and 7 decisions. The decision of Calcutta Bench of the Tribunal and Calcutta High Court are also on the issue. According to the respondents the scheme does not apply to the applicant.

8. In the facts and circumstances of the case, we are of the view that the applicant has no legal right to get his services regularized in the post of EDDA. However, since the applicant had worked for about four years as substitute EDDA, if he makes a proper representation before the respondents seeking for regularization of his service certainly the concerned respondents will consider the same in the light of the decision of the Supreme Court which we have already extracted. The applicant is directed to make such representation within a period of six (6) weeks from today containing all details before the concerned respondent in which case the said respondent shall certainly consider the same in the light of the decision of the Supreme Court (Supra) and take appropriate decision in accordance with law within a period of four (4) months thereafter. The applicant shall produce this order alongwith representation for compliance. If the applicant wanted to pursue his claim for assigning temporary status with reference to Annexure - 4 Scheme and the decisions of the Tribunal (Annexures - 5, 6 and 7) certainly the same also can be made in the representation directed to be filed. The respondent in that case will consider the said issue also in case the main claim is not found in favour of the applicant and appropriate orders passed on that issue also. This shall not preclude the applicant for making application as and when

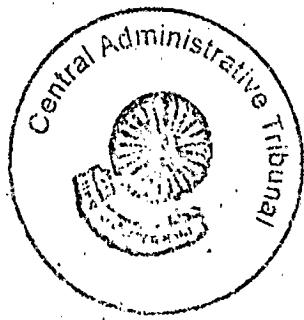
Yours

vacancy arises in Group 'D' post for seeking prior appointment as per the scheme (Annexure - 3).

The application is disposed of as above.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)



N. S. S.
Sectre 10.6.05
C.A.T.

HL 10/6

The Chief Post Master General,
Dept. of Post,
Meghdoot Bhawan,
Guwahati-1.

Dated: 25/05/2005.

Sub:- Judgement and order dt. 11/05/05 in OA No. 86/04.

Sir,

With due difference and profound submission, I beg to lay before your honour the following few lines for your kind consideration and necessary action thereof.

That claiming regular absorption against any Post, I preferred the above noted OA (OA No.86/04) before the Central Administrative Tribunal, Guwahati Bench. The Hon'ble Central Administrative Tribunal on 11/05/05 after hearing the parties to the proceeding was pleased to dispose of the said OA with a direction to consider my case in reference to the judgement and order dt.27/07/95 passed in OA 188/91 (Kailash Das and Ors. -V-U.O.I. & Ors) which was affirmed by the Hon'ble Supreme Court and the other connected cases i.e. judgement and order dt.28/08/98 passed in OA 40/96 (Anima Kalita-V-U.O.I. & Ors) and judgement and order dt. 06/02/02 passed in OA 172/01 (Anima Kalita-V-U.O.I). It is pertinent to mention here that the persons referred to above namely Kalish Das and Smt. Anima Kalita are presently enjoying the benefit of the judgement.

In that view of the matter I earnestly request your honour to appoint me against any post.

Thanking you,

Yours' Faithfully,

Md. Ajnur Ali

Md. Ajnur Ali.

Attested



Advocate

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SR. SUPERINTENDENT OF POST OFFICES,
GUWAHATI DIVISION, GUWAHATI-781001.

No.A-2/76/Basistha/CAT case/ OA No.86/04

Date : 21.09.05.

Sub : Examination of the representation submitted by Md. Anjur Ali for regular absorption in any post or for granting temporary Group 'D' status vis - a - vis the judgement/order dtd.11.5.05 in OA No.86/2004 passed by the Hon'ble Tribunal, Guwahati Bench.

ORDER

Md. Anjur Ali, a resident of Barpathar village, Post Basistha, Kamrup(Assam) was engaged as substitute (nominee) by Shri Chandiram Barua, EDDA, Beltala to work in place of the later on his temporary officiating promotion as Postman. Md. Ali accordingly worked as substitute EDDA, Beltola from 26.2.2000 on the risk and responsibility of the regular incumbent Shri Chandiram Barua. Similarly, Md. Ali also worked for some period as substitute EDDA at Basistha P.O. also in place of Shri Jamshad Ali regular EDDA of the office who was temporarily appointed to officiate as Group 'D' on the same condition that the regular incumbent held the full risk and responsibility for the work and conduct of Shri Anjur Ali, the substitute in terms of Rule-7 of GDS (Conduct & Employment) Rule, 2001 and the guidelines contained in DG(P) instruction (2) thereunder.

2. On the expiry of the officiating terms of Shri Chandiram Barua and Shri Jamshad Ali in Postman and Group 'D' post, and rejoining to their original post at Beltola and Basistha the substitute arrangement of Md. Anjur Ali was discontinued in usual course. Being aggrieved by termination from his engagement as substitute EDDA Md. Anjur Ali approached the Hon'ble Tribunal, Guwahati Bench and filed an application vide OA No.86/2004 seeking direction to absorb him in any post regularly or to grant temporary Group 'D' status on the ground of his engagement in the Department for long as substitute EDDA.

3. The Hon'ble Tribunal after hearing the parties and perusing the records disposed of the application on 11.5.05 with order rejecting his claim with however a direction that the applicant may make a representation before

ANJUR ALI
APPROVED

the Respondent seeking for regularization of his service since he worked for about four years and the Respondents would consider the same in the light of the decision of the Supreme Court as extracted in the judgement. It is also directed that the applicant may also pursue his claim for assigning temporary status in his representation which will also be considered by the Respondents and passed an appropriate order. In pursuance of the said judgement/order, the applicant has submitted a representation on 25.5.05 which was received through the office of the Chief Postmaster General, Assam Circle, Guwahati on 5.7.05 with direction to the undersigned to dispose of the representation by passing a speaking order. Meanwhile the copy of the judgement/order dtd.11.5.05 was received by this office on 1.6.05 through the CGSC concerned.

4. The undersigned being authorised and directed by the competent authority has examined the representation dtd.25.5.05 submitted by Md. Anjur Ali in the wake of the order dtd.11.5.05 of the Hon'ble Tribunal very carefully. It is seen that the petitioner has submitted the representation in short without putting in the grounds and justification in support of his claims for regular absorption in the department or for conferring him temporary Group 'D' status. He has referred the judgements of the Hon'ble Tribunal in the present OA and also in OA No.188/91 filed by Smt. Kailash Ch. Das and OA No.179/2001 filed by Smt. Anima Kalita to further his claim. In the judgement of the present OA filed by the petitioner, the Hon'ble Tribunal has in clear terms rejected the claim of the petitioner for regularisation/absorption in the department on the ground of his performance as substitute EDDA and also upheld the guidelines of the Department of Posts contained in Dts's No.65-24/88-SPB-1 dtd.17.5.1989 to the policy that substitutes engaged against absentees on leave should not be designated as casual labourer in the light of the observations/rulings of the Hon'ble Supreme Court in the case of COI and other - vs - V. Debika Guha and others (Civil Appeal No.3080 of 2000) decided on 28.4.2000(3) ATJ. 364. In the said Department's OM it has been clearly defined that the substitutes engaged against absentees are not to be treated as Casual Labourer. However, such substitutes may be considered for purpose of recruitment to Group 'D' posts when casual labourers are not available. In other words, substitutes will rank last in priority for purpose of recruitment in Group 'D' posts. These points have been reiterated by the Hon'ble Supreme Court in its judgement in the above referred Civil Appeal case.

5. Secondly, as regards the judgements in OA No.188/91 and 179/01 referred by the petitioner, perusal of these judgements reveal that the

applicants in those OAs were not situated similarly to the petitioner. In other words, the applicants in those OAs were not substitutes to absentees but appointed in the GDS posts temporarily on clear vacancy for which they were granted casual labourer status and temporary Group 'D' status etc. by virtue of their fulfillment of the conditions. Such condition does not exist in the case of the petitioner.

6. In view of what have been discussed above and explained in para 4 and 5 above, there is no merit in the representation of the petitioner. Therefore the claim of the petitioner for regularisation/absorption in the department as well as conferment of casual labourer status followed by temporary status in Group 'D' post can not be entertained. However, keeping in view the policy/guidelines of the Department and reiteration by the Hon'ble Supreme Court and the Hon'ble Tribunal in the present OA, the petitioner is informed that his case for recruitment in Group 'D' vacancy will be considered when such exercise is taken up in the division on availability of vacancies that too when other categories like GDS, casual labourers are not available as per priority list contained in Dte's letter referred to above and also subject to relevant recruitment rules.

The representation of the petitioner is disposed off as above.

S/AS
(S. Das)

Sr. Superintendent of Post Offices,
Guwahati Division, Guwahati-781001.

Copy to:

Revd k/D

- 1) Md. Anjur Ali, S/O Md. Abdul Ali, Resident of village - Barpathar, C/O Md. Khansur Ali, P.O. Basistha-781029.
- 2) The Chief PMG(Vig.), Assam Circle, Guwahati-1 w/r/t C/O's No.VIG/5/III/04 dtd.15.5.05.
- 3) The Registrar, CAT, Guwahati Bench, Bhangagarh, Dispur, Guwahati-5 for favour of filing in OA No.86/04 as record.
- 4) The SDI(P) East Sub-division, HQ - Guwahati-1 for information and record.
- 5) O/C

S/AS
Sr. Superintendent of Post Offices,
Guwahati Division, Guwahati-781001.

To,

Date : 25-10-05

The Chief Post Master General,
Dept. of Posts,
Assam Circle, Meghdoot Bhawan,
Guwahati- 1

Sub. : Consideration of my case for appointment in any Gr-D. Post.

Ref. 1. Judgement and order dt. 11-05-05 passed in OA No. 86/04.
2. Communication issued under memo No. A- 2/ 76/ Basistha / CAT
Case / OA 86/ 04 dt. 21-09-05.

Sir,

With due respect I beg to lay the following few lines for your kind consideration and necessary action thereof.

That Seeking regular absorption under the postal Deptt. having regard to my post service rendered in the Deptt. I preferred OA No. 86/04 before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati. The said Hon'ble Tribunal after hearing the parties to the proceeding was pleased to direct the Deptt. to consider my case in the light of the Apex Court Judgement as well as the Judgement rendered by the Hon'ble Tribunal. The Hon'ble Tribunal also, which disposing of the OA, noted down the fact of similarly situated employees and directed consideration of my case for regarding absorption.

That enclosing a copy of the said judgment I preferred a representation dt. 25-05-05 praying for my appointment against any post falling under Gr.- D category. My such representation was entertained by the appropriate authority and rejected by issuing the aforementioned order dt. 21-09-05 on the ground of non availability of the Gr. D vacancy. However the factual position as indicated in the order dt. 21-09-05 regarding the vacancy position is not correct. At present altogether atleast 6 vacancies are available in various sub- offices including the GPO break -out of which is given below for ready reference.

1.	Binova Nagar SO	- Gr. D Vacancy - 1
2.	Ulubari SO	- Gr. D. Vacancy - 2
3.	Khnanapara SO	- Gr. D. Vacancy -1
4.	Guwahati GPO	- Gr. D. Vacancy 2

In view of the aforesaid factual position I earnestly request your honour to appoint me in any one of the vacancy as indicated above and / or any other Gr. D. Vacancies excluding those 6 vacancies, for which I shall remain grateful to you.

Thanking you,

Sincerely yours,

Copy to :

Sr. Supdt. of Posts.
Guwahati- 1.

M.C. Jyoti, M/

Attested
by
Advocate

Guwahati Bench
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

Filed by

Central Admin. Dept.
Advocate
8. 1. 07

25

O.A. NO.140 OF 2006

Ajnur Ali

...Applicant

-Versus-

Union of India & Ors.

....Respondents

The written statements on behalf of
the Respondents above named-

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

1. That with regard to the statement made in paragraphs 1 of the instant application the answering Respondents beg to state that the order issued vide memo No. A2/76/Basistha/CAT Case/OA No.86/04 dated 21.9.05 was in accordance with the order. The claim of the applicant for regular absorption against any Gr. D post as well as for grant of temporary status could not be considered as it was not covered by any Departmental Rules.

गुवाहाटी फैसल, गुवाहाटी - 781001
Sr. Supdt. of Post Offices
Guwahati Div., Guwahati-781001

2. That with regard to the statement made in paragraphs 2 and 3 of the instant application the answering Respondents have no comment.

Contd...P/-

3. That with regard to the statement made in paragraph 4.1 of the instant application the answering Respondents have no comment.

4. That with regard to the statement made in paragraph 4.2 of the instant application the answering Respondents beg to state that the representation dated 25.5.05 submitted by the applicant in respondents of the order dtd. 11.5.05 of the Hon'ble Tribunal has been duly examined and considered in the light of the direction issued by the tribunal and in terms of the various laws laid down by the Apex Court and has been disposed of with the following speaking orders.

"There is no merit in the representation of the petitioner. Therefore, the claim of the petitioner for regularisation/absorption in the department as well as conferment of casual labourer status followed by temporary status in Gr. D post can not be entertained. However keeping in view of the policy/guidelines of the department and reiteration by the Hon'ble Supreme Court and the Hon'ble Tribunal in the present OA the petitioner is informed that his case for recruitment in Gr. D vacancy will be considered when such exercise is taken up in the Division on availability of vacancies that to when other categories like GDS, casual labourers are not available as per priority list contained in Directorates letter referred to above and also subject to relevant recruitment rules."

Contd... P/-

सरकारी अधिकारी, डाकखाना
गুৱাহাটী পৰগনা, গুৱাহাটী - ৭৮১০০১
Sr. Supdt. of Post Offices
Gumhatl Div., Guwahati-781001

As such, the claim of the applicant that his representation yielded no result is not correct.

The copies of the speaking order and Dte's order is annexed herewith and marked as Annexure -1 & 2

5. That with regard to the statement made in paragraph 4.3 of the instant application the answering Respondents beg to state that the applicant was never recruited as EDDA in Basistha against any vacancy rather he was provided to work as substitute vice Sri Chandiram Baruah, EDDA, Beltola w.e.f. 1.3.2000 (Annexure - 1 of the application) in consequence of temporary promotion of Sri Chandiram Baruah to the Cadre of postman in terms of Rule 7 of (GDS Conduct and Employment) Rule,2001 and the guidelines contained in DG Posts instruction (2) thereunder.

A copy of the DG's instruction is annexed herewith as Annexure - 3.

6. That with regard to the statement made in paragraph 4.4 of the instant application the answering Respondents beg to state that as already stated in para 4.3 the applicant was never appointed to hold any post of EDDA. He was only provided to work as substitute of regular EDDA of Beltola and Basistha for some periods. As the substitute of regular EDDA are not entitled for regular absorption consideration of his rec for such absorption does no arise.

Contd...P/-

পরিষিক অধিবক্তৃতা, পুরাতন
গুৱাহাটী সঁজল, গুৱাহাটী - ৭৮১০০১
St. Sudh. of Post Offices
Guwahati Dist., Guwahati-781001

7. That with regard to the statement made in paragraph 4.5 of the instant application the answering Respondents beg to state that the judgment of the Apex court mentioned in this para is regarding grant of temporary status to the casual workers only and the present applicant does not fulfill any eligibility criteria for the scheme laid down in the said judgment. In the Government of India, Department of Post letter No. 65-24/88 SPB.I dated 17.5.1989, it is clarified that substitute engaged against absentee should not be designated as casual labour. Consideration of such substitute for recruitment to Gr. D posts will come up only when other categories of eligible candidate ranked top in the priority list in the said DG post letter are fully absorbed or not available.

8. That with regard to the statement made in paragraph 4.6 of the instant application the answering respondents beg to state that the applicant to justify his claim for regular absorption referred judgment dtd. 27.7.95 in OA 188/91 before Hon'ble Tribunal but the respondents beg to state that in various subsequent judgment of Hon'ble High Court, Tribunal and Apex Court etc. it has been upheld that the substitute of Gramin Dak Sewaks (EDDA) have no right to seek absorption in any post in any capacity.

The copies of the some judgment and orders are annexed herewith as Annexure - 6 series.

Contd...P/-

প্রতিষ্ঠান সচিব, প্রাপ্তি - 781001
Sr. Supdt. of Post Offices
Guwahati Div., Guwahati-781001

9. That with regard to the statement made in paragraph 4.7 to 4.11 of the instant application the answering Respondents beg to state that the facts and circumstances of the cases which are cited by the application the instant application are not similar with the case of the applicant and hence the contention of these paragraphs are denied.

10. That with regard to the statement made in paragraph 4.12 of the instant application the answering Respondents beg to state that the representation dated 25.5.2005 was disposed off with a speaking order which is narrated in para 4 of the written statement.

11. That with regard to the statement made in paragraph 4.13 & 4.14 of the instant application the answering Respondents beg to state that simply availability of vacancy in Gr. D cadre does not make the applicant eligible for his regular absorption. His case comes within the grievance of Deptt. of Posts letter No. Annexure as Annexure-C. His case can only be considered when all regular ED Agents of the Division casual labours and ED Agents of other Division of the same region are fully absorbed. And such a situation has not yet happened within the jurisdiction of the respondents.

विभिन्न अधिकार, बाजार
गुवाहाटी भूगत, गुवाहाटी - 781001
Sr. Supdt. of Post Offices
Guwahati Div., Guwahati - 781001

12. That with regard to the statement made in paragraph 4.15 and 4.16 of the instant application the answering Respondents beg to state that as already narrated in the forgoing paras, substitute of ED Agents can not be designated as casual labour. The representation of the application has duly been considered and disposed off keeping all rules and order available in this regard.

संविधान अधिकारी, अस्कर
गुवाहाटी नगर, गुवाहाटी - 781001
Sr. Supdt. of Post Offices
Guwahati Div., Guwahati-781001

13. That with regard to the statement made in paragraph 4.17 of the instant application the answering Respondents beg to state that the statement of this paragraph by the applicant is false, concocted, untrue and no record of such fresh recruitment against the post in which the applicant worked as substitute is available in the records of the respondents.

14. That with regard to the statement made in paragraph 4.18 and 4.19 of the instant application the answering Respondents respectfully beg to state that while disposing the representation of the applicant the respondents has not violated provision of any Article of the Constitution of India or any laws.

15. That with regard to the statement made in paragraph 4.20 of the instant application the answering Respondents beg to state that no notice is required for

termination of the substitute provided against leave or temporary promotion of regular ED Agents.

16. That with regards to the statement made in paragraph 5.1 to 5.5 of the instant application the respondents beg to state that the grounds set forth in the instant application are not good grounds and not tenable in facts as well as in law and therefore the instant application is liable to be dismissed.

17. That with regard to the statement made in paragraph 6 and 7 of the instant application the answering Respondents beg to state that those are within the personal knowledge of the applicant hence beg to offer no comment.

18. That with regard to the statement made in paragraph 8 and 9 of the instant application the answering Respondents beg to state that in view of the facts and circumstances mentioned above, the applicant is not entitled to any relief or interim relief as prayed for and the application is liable to be dismissed.

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लिखित अधिकारी, अकाउंट
गुवाहाटी पोस्ट, गুৱাহাটী - ৭৮১০০১
Sr. Stipendiary of Post Offices
Guwahati Div., Guwahati-781001

VERIFICATION

I, Sri Dipendra Nath Sharma, S/o. Lal Phani Nath Sharma aged about 51 years, R/o working as Sr. Supdt. of Post. Office, G.H. Division District Kamrup..... and competent officer of the answering respondents, do hereby verify that the statement made in paras 1 to 3, 6, 7, 9 to 18 are true to my knowledge and those made in paras 4, 5, 8 being matters of record are true to my information derived therefrom which I believe to be true and the rests are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this 20th day of December 2006 at Guwahati.

Signature

 दीपेन्द्र नाथ शर्मा, डाकधर
 गुवाहाटी मंडल, गुवाहाटी - 781001
 Sr. Supdt. of Post Offices
 Guwahati Div., Guwahati-781001

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SR. SUPERINTENDENT OF POST OFFICE
GUWAHATI DIVISION, GUWAHATI-781001.

No.A-2/76/Basistha/CAT case/ OA No.86/04

Date : 21.09.05.

Sub :

Examination of the representation submitted by Md. Anjur Ali for regular absorption in any post or for granting temporary Group 'D' status vis - a - vis the judgement/order dtd. 11.5.05 in OA No.86/2004 passed by the Hon'ble Tribunal, Guwahati Bench.

ORDER

Md. Anjur Ali, a resident of Barpathar village, Post Basistha, Kamrup(Assam) was engaged as substitute (nominee) by Shri Chandiram Barua, EDDA, Beltala to work in place of the later on his temporary officiating promotion as Postman. Md. Ali accordingly worked as substitute EDDA, Beltola from 26.2.2000 on the risk and responsibility of the regular incumbent Shri Chandiram Barua. Similarly, Md. Ali also worked for some period as substitute EDDA at Basistha P.O. also in place of Shri Jamshad Ali regular EDDA of the office who was temporarily appointed to officiate as Group 'D' on the same condition that the regular incumbent held the full risk and responsibility for the work and conduct of Shri Anjur Ali, the substitute in terms of Rule-7 of GDS (Conduct & Employment) Rule, 2001 and the guidelines contained in DG(P) instruction (2) thereunder.

2. On the expiry of the officiating terms of Shri Chandiram Barua and Shri Jamshad Ali in Postman and Group 'D' post, and rejoining to their original post at Beltola and Basistha the substitute arrangement of Md. Anjur Ali was discontinued in usual course. Being aggrieved by termination from his engagement as substitute EDDA, Md. Anjur Ali approached the Hon'ble Tribunal, Guwahati Bench and filed an application vide OA No.86/2004 seeking direction to absorb him in any post regularly or to grant temporary Group 'D' status on the ground of his engagement in the Department for long as substitute EDDA.

3. The Hon'ble Tribunal after hearing the parties and perusing the records disposed of the application on 11.5.05 with order rejecting his claim with however a direction that the applicant may make a representation before

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Ranjan
G. A.

Substitutes engaged against absentees should not be designated casual labourer. For purposes of recruitment to Group 'D' posts, substitutes should be considered only when casual labourers are not available. That is, substitutes will rank last in priority, but will be above outsiders. In other words, the following priority should be observed:—

- (i) NTC Group 'D' officials.
- (ii) EDAs of the same Division.
- (iii) Casual labourers (full time or part-time. For purpose of computation of eligible service, half of the service rendered as a part-time casual labourer should be taken into account. That is, if a part-time casual labourer has served for 480 days in a period of 2 years he will be treated, for purposes of recruitment, to have completed one year of service as full time casual labourer).
- (iv) EDAs of other divisions in the same Region.
- (v) Substitutes (not working in Metropolitan cities).
- (vi) Direct recruits through Employment Exchanges.

NOTE.— Substitutes working in Metropolitan Cities will, however, rank above No. (iv) in the list.

[G.I., Dept. of Posts, Ir. No. 65-24/88-SPB. I, dated the 17th May, 1989.]

Done copy
Raoji
P.W.

where action for the grant of *ex gratia* gratuity/Severance Amount, etc., had not been initiated for want of a formal application from the concerned Gramin Dak 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.—Para. 2 (c).]

(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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Bogin
Rdw

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ANNEXURE - 4 Series

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Government of India
Ministry of Communications
Department of Posts



No.19-38/2003-GDS

Dated: March 31, 2004

To

All Heads of Circles,

Sub: Substitutes of Gramin Dak Sevaks (GDSs) have no right to seek absorption; Judgement dated 09.6.2003 of Hon'ble High Court Calcutta, Circuit Bench Port Blair in WPCT No. 58/2003 upholding the order dated 10.3.2003 of Hon'ble CAT Calcutta in OA No.14/A&N/2003 filed by Shri Sanjib Kr Mondal, Ex- GDS Mail Deliverer in Port Blair HO, regarding

Sir,

I am directed to enclose herewith copies of order dated 10.3.2003 of Hon'ble CAT Calcutta Bench in OA No.14/A&N/2003, and Judgement dated 09.6.2003 of Hon'ble High Court Calcutta, Circuit Bench Port Blair in WPCT No. 58/2003 on the above said subject.

2. You are requested kindly to bring the same to the notice of all concerned in the Circle for information and guidance.
3. The receipt of this letter may be acknowledged.

Yours faithfully,

(Anand Prakash)

Assistant Director (General) (GDS)

Encl: as stated

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B/S
Adv.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
CIRCUIT BENCH AT PORT BLAIR

W.P.C.T. No. 58 of 2003

In the matter of

An application under Article 226 of the
Constitution of India.

AND

In the matter of

Shri. Sanjib Kumar Mondal,
S/o Shri. B.B. Mondal,
R/o Prothrapur,
Port Blair

...Petitioner

-Versus-

The Union of India (Service through the
Secretary), Govt. of India, Ministry of
Communication, Sanchar Bhawan,
New Delhi - 110001
And 4 others.

...Respondents

662/14
Date..... 26/6/03

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
		9.6.03	<p>Ms. Shyamali Ganguly....for the petitioner.</p> <p>Mr. R.S. Saroop.....for the respondent.</p> <p>.....</p> <p>Let the matter appear</p> <p>tomorrow (10.6.03) for hearing.</p> <p style="text-align: right;">82</p> <p>(Barin Ghosh, J.)</p> <p style="text-align: right;">82</p> <p>(Jayanta Kumar Biswas, J.)</p> <p style="text-align: left;">Do</p>

SL. NO.

Showing the Office
or date of issue

Serial
No.

Date

Office notes, reports, orders or proceedings with signatures

WPCT NO.058 OI 2003

Shri Sanjib Kr. Mondal vs. The Union of India &
Others

13.06.2003

Ms.S.Ganguly ... for the petitioner
Mr.BK.Das ... for the Respondent No.1
Mr.R.S.Saroop for the other respondents.

On being nominated by Shri Goutam Roy

Choudhry, who was working as an Extra
Departmental Delivery Agent(E.D.D.A.), the
petitioner functioning as such w.e.f. 13.11.1999 and
continued to render such service until 14.1.2003.

The rules permit an Extra Departmental Delivery
Agent to nominate a person with the approval of
the appropriate authority to discharge his functions
in his absence in certain cases. The rules at the
same time makes it abundantly clear that such
nominees should not be permitted to render the
nominated service for a period in excess of 180
days, except in exceptional cases. Shri Goutam
Roy Choudhry nominated the petitioner for he was
elevated to the post of Postman. Shri Goutam Roy
Choudhry became the regular Postman w.e.f.
19.12.2002. Much prior thereto, in any case
immediately after 19.12.2002, the nomination of
the petitioner should have been revoked in terms
of the rules.

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings, if any.
			Be that as it may, this nomination was ultimately revoked on 11.1.2003 by the authority concerned and accordingly, the authority concerned prevented the petitioner from discharging the further duty of the nominated EDDA.
			The petitioner approached the Tribunal seeking regularization in the post of EDDA, principally on the ground that he has rendered such services for a period in excess of three years.
			The appointment to the post in question is governed by the rules. The rules do not permit absorption of nominated EDDAs. The rules provided that in case EDDAs are required for the incumbent has been promoted, the post must be filled up by appointment.
			In that view of the matter, the petitioner has no right to seek absorption and accordingly the Tribunal has rightly rejected the application made by the petitioner before it.

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Noting by Office of Adyente	Serial No.	Date	Office notes, reports, orders or proceedings with signature
			For the reason recorded above, we do not intend to interfere with the order of the Tribunal and accordingly dismissed the writ petition.
			Before parting with, we would only like to add that in the event the Department requires EDDAs to be appointed afresh, they shall take steps as per the rules to fill up such post.
			There shall be no order as to costs.
			(Barin Ghosh, J.)
			(Jayanta Kumar Biswas, J.)
			Certified to be true Copy Shri <u>Chandramouli</u> Chief Minister's Officer High Court of Calcutta at Port Blair Authorised 10, S 76, Justice Hall 1 or 10/78

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Annexure R-2

(a)

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 14/MN/2003

Date of order: 10.3.2003

Present: Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mr. A. Sathat Khan, Judicial Member



SANJIB KR. MONDAL

VS

UNION OF INDIA & ORS.

For the applicant: Mr. M. S. Banerjee, counsel
Mr. A. Banerjee, counsel
For the respondents: Mr. B. K. Das, counsel
Mr. S. Chakraborty, counsel

ORDER

Held 1d. counsel for both sides.

2. 1d. counsel for the applicant submitted that the applicant served as a nominee in the place of Sri Gautam Roy Chowdhury who was holding the charge of Extra Departmental Delivery Agent (E.D.D.A.) w.e.f. 13.1.2002 and that after the 19.12.2002, the applicant was not permitted to work as nominee in the department and the respondents have appointed the respondent No. 6 in place of Sri Gautam Roy Chowdhury.

3. Admittedly, the applicant was working as nominee of Gautam Roy Chowdhury and he cannot claim continuation as a matter of right. It is also pertinent to note that it is only an arrangement between the original incumbent and the applicant and the applicant is not entitled to get any termination notice

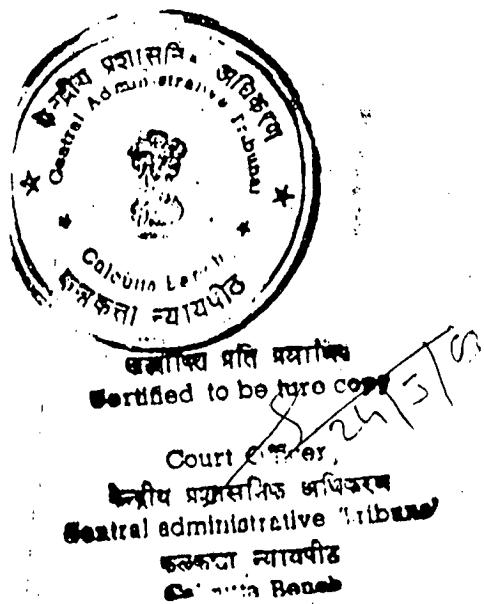
contd.. 2

as per the E.D.D.A. Rules. Lt. counsel for the applicant could not place any rule to show that even a nominee requires a notice of termination. The applicant being a nominee only cannot find fault with the department in appointing the respondent No. 6 in place of the original incumbent, Gautam Roy Chowdhury who was appointed as regular Postman. We see no reason to entertain this application and, therefore, the same is dismissed. No order as to costs.

Sd/-
MEMBER (J)

S. M.

Sd/-



(a) Sl No of the "Appln ... 1652
 (b) Name of the applicant M. M. M. S. B
 (c) Dt. of presentation of application for copy 10.3.03
 (d) No. of pages 642
 (e) Copying fee charged urgent or ordinary Rs.
 (f) Dt. of preparation of copy 12.3.2003
 (g) Dt. of delivery of the copy to the applicant 12.3.03

केन्द्रीय प्रशासनिक अधिदरबण
Central Administrative Tribunal

OK - 1 MAR 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

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

28.2.07
Filed by :-
The Applicant
through
Shridip K. Gos.
Advocate

O.A. No. 148 of 2006

Aznur Ali

vs.

Union of India & ors.

R E J O I N D E R.

1. That the applicant has received a copy of the Written Statement filed by the respondents. The applicant has gone through the Written Statement and has understood the contents thereof. Save and except the statements which are admitted hereinbelow other statements may be treated as total denial and the respondents are put to the strictest proof thereof.
2. That the applicant instead of dealing with the various contentions raised in the Written Statement, begs to formulate the issues raised by the respondents in denying the contentions of the OA.
- 2.a. That the respondents in their written statement controverted claim of the applicant as the same does not covered by any departmental rules²⁸

2.b. That the contentions of the respondents in the Written statement is that the applicant being not recruited as EDDA can not claim regular absorption.

2.c. That the basic contention of the respondents in their written statement is that the applicant under any circumstances can not be treated as casual worker.

2.d. That the respondents however, have admitted the fact that the right of the applicant can only be surfaced as and when the posts of ED becomes available .

3.a. That in reply to the aforesaid issues raised by the respondents, as indicated in para 2.a and 2.b. above the applicant begs to state that the respondents have made a contradictory statements i,e, at one time they say that the case of the applicant is not covered by any departmental rules at the same time they have admitted in para 11 of the written statement that the case of the applicant can be considered as and when vacancies are available.

3.b. That in reply to the contentions as indicated in para 2.c. the applicant begs to state that in the earlier judgment and order dated 11.05.2005, (OA No 86/2004) the Hon'ble Court has carefully dealt with the Hon'ble Apex Court cases relating to the issue involved in connection with the present facts and as such the contentions of the respondents are totally uncalled for and same are liable to be set aside and quashed.

4. That the applicant begs to state that the respondent themselves have admitted the fact that the case

of the applicant will be considered as and when the vacancies would be occurred and at present as many as 20 vacancies are available under the respondents but inspite of repeated requests they are not considering his case. In such a situation the applicant had filed this OA.

5. That the contentions raised by the respondents as well as the case laws submitted by them are not relevant at all considering the facts and circumstances of the case and as such the OA deserves to be allowed and same may be allowed directing the respondents to absorb the applicant in any of these vacancies.

6. That the applicant begs to state that in view of the above there are good grounds in the OA to grant relief to the applicant in the OA.

VERIFICATION

I, Sri Ajnur Ali, aged about 28 years, son of Late Abdul Ali, resident of Vill. Barpathar, P.O. Basistha, Pin-781029, do hereby solemnly affirm and verify that the statements made in paragraphs 2a-2d, 3a..... are true to my knowledge and those made in paragraphs 3(b), 4..... are matter of records and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 28th day of February, 2007.

Md. Ajnur Ali

Signature.