

0/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

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SECTION OFFICER (Judl.)

Bakshi
7/2/98

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI -5.

ORIGINAL APPLICATION NO. 6/95

MISC PETITION NO. (O.A.NO.)

REVIEW APPLICATION NO. (O.A.NO.)

CONT. PETITION NO. (O.A. NO.)

Mahesh Taye

APPLICANT(S)

VERSUS

Union of India vs.

RESPONDENT(S)

MR. J. L. SARKAR

Advocate for the
Applicant.

MR. M. CHANDA.

A. K. CHOWDHURY

Advocate for the
Respondents

S.G.B.C.

Office Note

Court Orders

6-1-95

6-1-95

This application
is filed one IPO NO.
S.B. 2361, dated 28.12.94
from (Baru 50) - is in favour
of Laid before 10

Benefit in favour of
orders.

M. Chanda
Section Officer,
Central Administrative Tribunal
Guwahati Bench.
Guwahati-6

Regularisati on
18.1.95 & issued with
no. 361-65 on 20.1.95

This application has been moved
by learned counsel Mr. M. Chanda on
behalf of the applicant, Shri Mahesh
Taye, a casual Mali in the office of
Defence Estates Officer, Jorhat Circle.
The applicant seeks regularisation of
his service. Learned Addl. C.G.S.C.
Mr. A.K. Choudhury is present and has
received copy of the application.

Heard Mr. Chanda on the question
of Admission and perused the contents
of the application. Application is
admitted. Issue notices on the respon-
dents under registered post. List
on 15-2-95 for written statement
and further orders.

Heard Mr. M. Chanda and Mr. A.K.
Choudhury in respect of interim relief
prayer. Pendency of this application
shall not be a bar for the respondents
to consider regularisation of the
service of the applicant or to appoint
him to any other post which is eligi-
ble.

Notice duly sent
on 12.4 & 5.
6/11/95

1m
6/11/95

6/1-95

Member

OFFICE NOTE

COURT ORDERS

15.2.95

None for the applicant.

Mr. A K Chowdhury, Addl. C.G.S.C.
for the respondents.At the request of Mr. Chowdhury
6 weeks time for written statement.
Adjourned to 3.4.95 for orders.60
Member

Vice-Chairman

trd

3.4.95

None present. Adjourned to
8.5.95 for orders. No written
statement is filed till today.

Vice-Chairman

60
nkm

Member

For S.M.

G.2.95To be listed
for hearing
on 1.9.95

8-5-95

Mr. J. L. Sarkar on leave. Mr. A. K.
Choudhury Addl. C. G. S. C. for the res-
pondents. Written statement is has
already been filed.To be listed for hearing on
6-7-95.60
Member

Vice-Chairman

4.9.95

After 17.11.95

Rev.

Rev. (6)5

OA/TA/CD/PA/MP No. 6 of 1995

OFFICE NOTE

DATE

ORDER

W/ statement has
been filed on
behalf of respds
No 1-4 at page
Nos 22-25

3.4.96

Written statement has been submitted.
Case is ready for hearing.
List for hearing on 29.5.96.

6
Member

aff 6/11

pg

12.11.95

30.5.96

Learned counsel for the parties are

present.

By consent hearing adjourned

Member(A)

Member(J)

1) Notice duly served
on op. 1, 2, 4 & 5

nkm

2) W/ statement has been
filed

aff 11

12.2.96

Agreements

13.2.96

By order
Bosu13.2.96

To be listed for
hearing
on 3.4.96

By order
Bosu

1) Notice duly served on
op. nos. 1, 2, 4 & 5
2) W/ statement - has been filed

aff 27/5

OFFICE NOTE

DATE

ORDER

31.5.96

Mr. M. Chanda, learned counsel for the applicant and Mr A.K. Choudhury, learned Addl. C.G.S.C., for the respondents are present. Mr Chanda seeks adjournment for filing rejoinder. Hearing adjourned. List for hearing on 4.7.96.

In the meantime Mr Chanda may submit rejoinder, if he desires with copy to the counsel for the respondents.

Member(A)

Member(J)

nkm

4-7-96

Learned counsel Mr.J.L.Sarkar for the applicant. Learned Addl.C.G.SC. Mr.A.K. Choudhury for the respondents.

List for hearing on 5.8.96.

Member

c 1m

5.8.96

Learned counsel Mr M. Chanda for the applicant. Mr A.K. Choudhury, learned Addl. C.G.S.C., for the respondents.

List for hearing on 3.9.96.

Member

nkm

3.9.96

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

List for hearing on 27.9.96.

Member

OFFICE NOTE

DATE

ORDER

27-9-96

Learned counsel Mr.J.L.Sarkar and

Mr.M.Chanda for the applicant. Addl.

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

List for hearing on 21-11-96.

21-2-97

lm

M/27/96a
Member1) written statement
has been filed in
behalf of the
R. 1 to 4.2) Notice duly
Served on R. 5.
1, 2, 4 & 53) Memo has been
filed by the
Addl. C.G.S.C.

24.2.97

List on 21.3.1997 for hearing.

M/21/220-3-97

27.3.97

Case is ready
for hearing as
Regard Service.trd
M/20/36a
Member6a
Vice-ChairmanHeard the learned counsel for the
parties. Hearing concluded. Judgment delivered
in open court, kept in separate sheets. The
application is disposed of.20-36a
Member6a
Vice-Chairman

nkm

15.4.97Copy of the order
has been sent to
the D/Section for
issuing in form
to the parties.15/4Issued under
D.N. 1320 to 1325
on 24.4.97 through
regd with A.D.15/4/97

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI-5.

O.A. NO. 6 of 1995
T.A. NO.

DATE OF DECISION 21.3.1997

Shri Mahesh Taye

(PETITIONER(S)

Shri J.L. Sarkar and Shri M. Chanda

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

of India and others

RESPONDENT (S)

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

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI D.N. BARUAH, VICE-CHAIRMAN
THE HON'BLE SHRI G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ? *No*
2. To be referred to the Reporter or not ? *Not*
3. Whether their Lordships wish to see the fair copy of the judgment ? *No*
4. Whether the Judgment is to be circulated to the other Benches ? *No*

D. Baruah

Judgment delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.6 of 1995
Date of decision: This the 21st day of March 1997

The Hon'ble Justice Shri D.N. Baruah, Vice-Chairman
The Hon'ble Shri G.L. Sanglyine, Administrative Member

Shri Mahesh Taye,
Mali,
Office of the Defence Estates Officer,
Jorhat Circle, Jorhat.Applicant
By Advocate Shri J.L. Sarkar and Shri M. Chanda.

- versus -

1. Union of India
Through the Secretary, Ministry of Defence,
Government of India, New Delhi.
2. The Director General,
Defence Estate,
Ministry of Defence,
New Delhi.
3. The Director,
Defence Estate,
Headquarter Eastern Command,
Ministry of Defence,
Calcutta.
4. The Defence Estates Officer,
Jorhat Circle,
Jorhat, Assam.
5. Shri Ganesh Dey,
Mali,
Office of the Defence Estates Officer,
Jorhat Circle,
Jorhat, Assam.Respondents

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

.....

O R D E R

BARUAH. J. (V.C.)

This application has been filed by the applicant praying for a direction, interalia, for regularisation of his post.

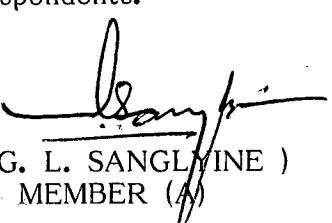
2. The applicant was appointed Mali in the office of the Defence Estates Officer, Government of India, Ministry of Defence. According to the applicant he belongs to the Scheduled Caste Community. However, the respondents have stated that the applicant is not a member

of the Scheduled Caste Community, but a member of the Scheduled Tribe Community. In May 1991, the applicant was appointed Mali in the Defence Estate Office, Jorhat, for a period of five months. His name was sponsored by the local Employment Exchange. Thereafter, his services were extended from time to time after every six months with an artificial break of one day. The applicant was discharging his duty as Mali till September 1993 when his services were terminated. The contention of the applicant is that in the present facts and circumstances of the case, instead of terminating his services he ought to have been regularised in his post.

3. We have heard Mr J.L. Sarkar, learned counsel for the applicant, and Mr A.K. Choudhury, learned Addl. C.G.S.C., appearing on behalf of the respondents. Mr Choudhury informs this Tribunal that a post is now available at Silchar and the applicant can very well be appointed in that post on a regular basis. Mr Sarkar has no objection if the applicant is appointed at Silchar as Chowkidar.

4. Considering the submission of the learned counsel for the parties we dispose of this application with a direction to the respondents to appoint the applicant Chowkidar in the Office of the Sub-Defence Estate Officer, Silchar, as early as possible, at any rate within a period of one month from today.

5. Mr A.K. Choudhury shall communicate the decision to the respondents.


(G. L. SANGLVINE)
MEMBER (A)


(D. N. BARUAH)
VICE-CHAIRMAN

nkm

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 6 of 1995

Shri M.Taye

-versus-

Union of India & Ors.

Filed by the applicant
Date on which cause
brought

LIST OF DATES

Sl.No.	Date	Particulars	Para & Page
1		The applicant was a civilian employee in the department of defence Estate Office, Govt. of India, Ministry of Defence. He is a member of Scheduled Caste Community.	6.1
2	6.5.91 7.4.92 4.11.92	The applicant was appointed as Mali in the office of the Defence Estate Office, Jorhat vide order dated 6.5.1991 for a period of 5 months, his name was sponsored by local employment exchange. Thereafter the service of the applicant was extended from time to time, after every six months with an artificial break of 1 day. The applicant completed more than 2 years, on the basis of 6 months sanction vide appointment letters dated 7.4.92, 4.11.92 respectively and acquired a right to get regular appointment.	6.2 & 6.3 Annex.1, 2 & 3
3	12.3.93	The applicant was working against on- regular vacancy for more than 2 years and his case of regularisation submitted	

Contd...

vide letter dated 12.3.93 but one
Shri ^{Genesh} Mahesh Dey was appointed as
Chowkidar, in May 1993 at D.E.O
Agartala subsequently transferred
to D.E.O. Jorhat, and appointed as
Mali against the post in which the
applicant was working.

4	17.5.93	That the Defence State Officer wrote a letter dated 17.5.93 to the Director, Defence Estates, Eastern Command Calcutta, stating that the applicant is working for last more than two years and fulfilled all norms to be appointed on regular basis, against regular vacancy of Mali.	6.8 Annex.-4
5	17.8.93	The applicant submitted repres- entation dated 17.8.93 but to no result.	6.9 & 6.10 Annex-5
6	31.1.91	The Under Secretary to the Govt. of India, Ministry of Defence, issued revised instruction regard- ing regularisation of the services of non-industrial casual personnel wherein it is stated that Casual employees who are appointed through employment exchange and possessing experience of a minimum of two years, they will be eligible for regularisation in the office/Establishment. On availabi- lity of regular vacancies and the casual employee who put at least 240 days (206 days in case of 5 days week) of casual service. The applicant has been sponsored through Employment Exchange and he has completed 240 days of casual service and fit for regular appointment.	

Contd..

1 2

3

4. & 5.

7 Sept. '93 The D.E.O. very strongly recommended in his letter dated Sept. '93 to the Director, but thereafter applicant not allotted any work by the D.E.O. Jorhat.

6.12 & 6.13

Annex-7

The applicant has acquired a valuable right for regular appointment with all consequential service benefit.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: G.J. 5

I N D E X S H E E T

O.A. CASE NO. 6/95

..... M. T. A. Y. E. APPLICANT (S)

vrs.

..... H. C. & L. C. M. S.

Sl. No.	DESCRIPTION OF DOCUMENTS	PAGE
1.	Application with Annexure	1 - 21
2.	Written Statement on behalf of the Respondent No 1 to 4 has been submitted.	22 - 23

Application fee of 25.00/-
Paid vide Bank Draft.....
Serial Order No..... 882361
Dated 28.12.94

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

Filed by the applicant
Handwritten in black ink

An application under section 19 of the
Administrative Tribunals
Act 1985.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकार

5 JAN 1995

16
P/2
Gewahati Bench
গুৱাহাটী বৰাসোৱী

O.A. No. 6 1945

Sri Mahesh Taye Applicant

Vs.

Union of India & Ors. Respondents

I N D E X

Sl. No.	Annexure	Application Particulars	Page No.
1	-	Application	1-14
2.	1	Appointment letter dt. 6-5-91-12	
3.	2	" " 7-4-92-13	
4.	3	" " 4-11-92-14	
5.	4	Letter dt. 17-5-93-15-17	
6.	5	Representation dt. 17-8-93-2 18	
7.	6	Letter dt. 31-1-91- 19-20	
8.	7	Letter dt. Sept/93 21	

1. Particulars of the applicant

Shri Mahesh Taye - Mali,

S/o Kanai Taye

Office of the Defence Estates Officer

Jorhat Circle,

Jorhat-5, ~~Assam~~ Assam.

2. Particulars of the Respondents

1. Union of India

Through Secretary, Ministry of Defence,

Govt. of India, New Delhi.

2. Director General

Defence Estate

Ministry of Defence

R K Puram, New Delhi-110066

3. Director

Defence Estate

Headquarter Eastern Command

Ministry of Defence

13 Camac Street (7th Floor)

Calcutta-17

4. Defence Estates Officer

Jorhat Circle, Jorhat-5

Assam.

5. Shri Ganesh Dey, Mali

Office of the Defence Estates Officer,

Jorhat Circle, Jorhat-5

Assam.

3. Particulars for which this is made :-

This application is made praying for regularisation of services of the applicant as Mali with all consequential service benefit in the office of the Defence Estates Officer, Jorhat Circle, Jorhat - 5 from 6.5.1991.

4. Jurisdiction :-

The applicant declares that the subject matter for which the applicant wants redressal is within the jurisdiction of the Tribunal.

5. The applicant further declares that the application is made with the limitation prescribed in Section 12 of the Central Administrative Tribunals Act, 1985.

*Received
on 23.3.93*

6. Facts of the case :

1. That the applicant is a citizen of India as such he is entitled to all rights and privileges guaranteed by the Constitution of India.

The applicant is a civilian in the department of Defence Estates Office, Jorhat. He is a member of Scheduled Caste Community.

2. That the applicant was appointed as Mali in the scale of Rs. 750/- to 940/- per month in the Defence Estates Office, Jorhat vide appoint letter No. 6016/ADM/22 dated 6.5.91. The applicant's name was recommended by the local Employment Exchange, Jorhat. Initially the applicant was appointed for a period of 5(five) months. Since then his appointment is continued on the basis of sanction accorded by this department. Thereafter the applicant's service has been extending after every six months with an artificial break of 1 day. Although the applicant has completed more than two years of service on the basis of six months sanctions, but the service of the applicant has not regularised. It is highly unfair on the part of the respondents by not regularising the service of the applicant (Casual Employee) who is serving in the same organisation for more than two years regularly.

Copies of appointment letter dated 6.5.91, 7.4.92, 4.11.92 are annexed herewith as Annexure 1, 2, 3 respectively.

3. That the applicant begs to state that he is serving in the organisation regularly, sincerely and to the full satisfaction of the authority concerned. The applicant

has fulfilled all norms of service as such he has acquired a right to get regular appointment as Mali in the organisation.

4. That the applicant begs to state that although he is placed in the pay scale of Rs. 750/- to 940/p per month but till date he is getting the initial pay of Rs. 750/- plus dearness allowances. This act of the Defence Estates Establishment is highly discriminatory, illegal and unfair.

5. That the applicant begs to submit that he has already spent more than 2 years service in the Defence Estates Establishment but till date no job security is provided to the applicant by the Defence Estates Establishment. The applicant has been entrusted with the work of flowering, Gardening, Plantation of trees and ~~weeds-out~~ unwanted grass, vegetation in the Defence Estates Organisation Garden at Jorhat. Therefore the regular post of Mali is justified since his appointment on 6.5.1991.

6. That the applicant begs to state that he is working against a regular vacancy for last more than 2 years. His case for regularisation alongwith all supportise documents has already been submitted before the Respondents vide letter No. 6016/ADM/ dated 12.3.93 but to no result.

7. That the applicant begs to state that one Shri Mahesh Dey was appointed as Chowkidar on May 1993 at D.E.O. Agartala and subsequently he is transferred to the D.E.O., Jorhat and appointed as Mali against a regular vacancy. Be it mentioned that against the said regular

vacancy the applicant is working for more than two years with utmost sincerity and satisfaction to the authorities as such the transfer appointment of Shri Ganesh Dey to the post of the applicant is very much illegal, unfair and violative of administrative fairplay.

8. That the D.E.O. Jorhat has submitted a letter No. 6016/ADM/XVII/169 dated 17.5.93 to the Director, Defence Estates, Eastern Command, 13. Camac Street, Calcutta stating that Shri Mahesh Taye (applicant) is working in his office for last more than two years and the applicant has fulfilled all norms to be appointed on regular basis as Mali as he is working against a regular vacancy and the DEO also stated the fact of the Respondent No. 5.

A copy of letter No. 17.5.93 is annexed as Annexure-4.

9. That the applicant begs to state that he has submitted a representation dated 17.8.93 before the Director General, DE, Govt. of India, Ministry of Defence, R.K. Puram, New Delhi-66 stating all facts and circumstances of the case and the applicant requested him to regularise the service of the applicant but to no result.

A copy of representation dated 17.8.93 is annexed herewith as Annexure-5.

10. That the applicant begs to state that he is apprehending that his service may be terminated at

*Finalized
on 23/3/94*
5

any time illegally and arbitrarily.

11. That the petitioner states that the Under Secretary to the Government of India, Ministry of Defence, New Delhi issued instructions vide letter No, MF 4 (3)/89/D(Civ.II) dated 31.1.1991 to all Chief of Army Staff, Air Staff, and Naval Staff as follows :

The revised instruction are given below :

The regularisation of the services of non-industrial casual personnel already appointed shall be regulated as under :-

a) The casual employees should have been engaged through Employment Exchange.

c) Only a casual employee who has put in at least 240 days (206 days in case of 5 days week) of casual service (including broken period of service) during each of the two years of service referred to above will be entitled to the benefit mentioned in (b) above.

From the above letter it is clear that the name of the applicant has been engaged/sponsored through Employment Exchange and the applicant has completed 240 days of casual service in the D.E.O., Jorhat Circle as such he is fit person to be appointed as a regular Mali in the said establishment also the applicant is working regularly against a permanent vacant post.

ar.alr 31.1.91
A copy of letter dated 31.1.91 is annexed herewith as annexure 6.

12. That the applicant begs to state that the D.E.O., Jorhat Circle issued a letter vide No. 6016/ADM dated September 1993 to the Director, D.E. Ministry of Defence HQ, Eastern Command, 13 Camac Street (7th Floor) Calcutta. for regular appointment of Shri Mahesh Taye, Mali at D.E.O., Jorhat as he is working against a permanent vacancy. The said D.E.O also stated in his letter about the satisfactory service of the applicant and duties performing in the establishment. Thereafter the DEO requested and recommended to appoint the applicant in the post of Mali on regular basis. *The respondent for last few months not allotting him any work and also not paying salary.*
A copy of letter dated September, 1993 is annexed as Annexure 7.

13. That the applicant begs to submit that he is working since 8.5.1991 in the D.E.O., Jorhat against a vacant post of Mali and Respondent No. 5 transferred from A.D.E.O, Agartala have been appointed as a Mali in the same establishment. The applicant has accrued a right to get appointment on regular basis against the vacant post of Mali as per letter dated 31.1.91 (Annexure-6)

as such the Respondents has violated the Article 14 and 16 of the Constitution of India by not appointing the applicant on regular vacant post and Your Lordships may be pleased to interfere in the matter and direct the Respondents to appoint the applicant on regular vacant post permanently as he has completed the terms and conditions of letter dated 31.1.91 (Annexure-6).

14. That this application is made bonafide and in the interest of justice.

7. Reliefs prayed for

Under the facts and circumstances explained above, the applicant prays for the following reliefs :

1. That the Respondents be directed to regularise the service of the applicant in the post of Mali with effect from 8.5.1991-

2. That the Respondents be directed to give all consequential service benefits from the date of regularisation.

3. That the applicant be paid salary in the time scale of Pay Rs. 750/- to 940/- per month with increments for each completed year of service and arrear payments.

4. Costs of the case.

Pass any other order as may deem fit and proper by this Hon'ble Tribunal.

The above reliefs are prayed for on the following amongst others.

G R O U N D S

1. For that the applicant is working in the Defence Estates Circle Office at Jorhat for a period more than 2 years as Mali for full time.
2. For that the regular employees entrusted with similar nature of works in the Defence Estates, are getting all service benefits.
3. For that the long span of service more than 2 years as casual employees accrues a right to the applicant to be regularised his service as Mali.
4. For that after working for long period in time scale of pay has earned annual increment in the pay scale which has not been given to him.
5. For that the post of Mali, where the applicant is working, is a permanent vacant post.
6. For that the applicant has completed all norms of service as per letter dated 31.1.1991 (Annexure-6)
7. For that the applicant is working regularly as Mali in the ~~inexistent~~ Defence Estates, Jorhat Circle Office with the fullest satisfaction to the authorities.

8. Interim Reliefs prayed for :-

The applicant prayes for the following Interim Reliefs :-

1. That the applicant be given all allowances applicable as to other regular employees in the pay scale of Rs. 750/- to 940/- per month.
2. That no other person shall be appointed on regular basis in the post of Mali during the pendency of this application.
3. That the Respondents be directed to appoint the applicant in the post of Mali on regular basis at D.E.O., Jorhat.
9. Matter not pending in any other Court/Tribunal.

That the applicant has not filed any other application in any other Court/Tribunal.

10. Details remedy exhausted :-

There is no scope of any other remedy except the application before this Hon'ble Tribunal.

11. Particulars of the Postal Order :-

Postal Order No. :- 882361

Issued from :- G.P.O., Guwahati

Payable at :- G.P.O., Guwahati

Date :- 26-12-94

12. Details of Index :-

An index showing the particulars of documents enclosed.

13. List of Enclosures :-

As per Index.

11

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

I Shri Mahesh Taye Son of Kanai Taye, working as a Mali in the office of the Defence Estates Circle Office, Jorhat and the applicant in this application and do hereby verify that the statements made in this application are true to my knowledge and belief and I have suppressed nothing material facts of the case.

Date 5.1.95

Signature

Place

Shri Mahesh Taye

12

ANNEXURE - I

No. 6016/ADM/22
Office of the Defence Estate
Officer, Jorhat Circle,
Jorhat

Dt. 6.8.91

To :

Shri Mahesh Taye,
Chandan Nagar,
Club Road
P.O. Jorhat

Subject : APPOINTMENT

It is to inform you that you are selected and appointment as Casual Mali, at the rate of 1/3 of pay at the minimum of relevant pay scale plus dearness allowances for a period of 5(five) months and the period will be counted with effect from the date of your sincere duties. Please note that service are liable to be terminated at any time during this period.

Sd/- Illegible
Defence Estates Officer
Jorhat Circle

~~TESTED~~

Ar

Associate

ANNEXURE-II

D.O.PT.II.No. 15/92 dated 7.4.92

Shri Maheswar Gaye, - Appointed as casual Mali for a Casual Mali period of six months with effect from the 26-3-92 to 21-9-92 at the rate 1/30 of pay at the minimum of relevant pay scale plus dearness allowances for 8 hours a day is (minimum scale of basic pay Rs.750/- plus D.A.

Authority :- Dto DE EC letter No.

368175/LC-I/XI/62

dated 12.3.92

No. 681 4/ADM

Office of the DED Jorhat

Circle, Jorhat-5,

Dated the 7 th April 92

Sd/- x x x

Defence Estates Officer

Jorhat Circle

TESTED

h
Associate

ANNEXURE-3

D.O. PT-II No. 44/92 dted. 4.11.92 :

APPOINTMENT

Shri Mahesh Taye : - Appointment as Casual Mali for a
 Casual Mali period of six months with effect
 from 23.9.91 to 27.3.92 at the
 rate 1030 of pay at the minimum
 of relevant pay scale plus dearness
 allowances for a hours of a day is
 minimum scale of basic pay Rs.750/-
 plus D.A.

Authority : - Dto, DE, EC letter No. 360176/LC-1/XI/73
 No. 6014/ADM

Office of the Defence Estates
 Officer, Jorhat Circle, Jorhat-5,

Dated the 4 th Nov'92

Sd/- xx xx xx

Defence Estate Officer,
 Jorhat Circle.

Distribution :-

1. Office Order Book
2. A.A.O. Shillong
3. The Dto, DE, EC Calcutta-17
4. Personal file of Shri M. Taye

Casual Mali.

TESTED
 92
 Attached.

ANNEXURE-IV

No. 6016/ADM/XVII/169

Office of the Defence Estates
Officer, Jorhat Circle, Jorhat-5

Dated the 17th May '93

To :

The Director
Defence Estates
Eastern Command
13. Camac Street (7th Floor)
Calcutta-700 017

Sub : Engagement of Casual Labour in the Defence Estates Organisation, application of casual Mali in Deo, Jorhat Circle : Jorhat.

Sir,

Reference your past copy of telegram No. 36025/LC-1/EC/ DE/191 dated 30.4.93 and letter No. 360175/LC-1/104 dated 12.3.93.

It is stated that there is a regular vacancy of Mali in this office. Sri Mahesh Taye has been working in this office against the regular vacancy of Mali since 8th May '91 in the pay scale of Rs. 750/- to 940/- plus DS as admissible. Sanction for appointment/continuation for Sri Mahesh Taye Casual Mali has been obtained from Directorate DE, EC from time to time with one day break after period of six months. Reference in this regards may kindly be had to your Directorate DE, EC Nos. 130175/LC-1/XI/30 dated 7.2.91 (2) No. 360175/LC-1/XI/73 dated 30.9.92 (3) No. 360175/LC-1/XI/62 dated 12th March 1992 (4) No. 360175/LC-1/XI/49 dated 6th September 1991.

Shri Mahesh Taye was sponsored by the local Employment Exchange and fulfilled all the conditions of eligibility. Sanction to ~~continuance~~ continue him w.e.f. 23.3.93 to 22.9.93 was sought for vide this office letter No. 6016/ADM/88 dated 19th February '93 which in turn was forwarded to Director General, DE vide Directorate DE, EC letter No. 360175/LC-1/10 dated 12th March '93. Reply of Director General, DE thereto is awaited.

3. As regards the post of Chowkidar one Shri N C Bora was appointed to the post of Chowkidar as approved vide Directorate DE, EC letter No. 36011/XXVII/225 dated 29.2.91 (Copy enclosed) and taken of strength vide DO Part-II No. 19/01 dated 21.3.91 (Copy enclosed). After completion of all requisites formalities like sponsored from Employment

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Exchange, Medical fitness and Character verification etc. in the scale of pay Rs. 750/- to 940/- plus usual allowances as admissible initially on probation for 2 years. The individual has completed his period of probation on 21.3.93 satisfactorily. It is submitted, in view of above, that there is no vacant post of Chowkidar in this office. It may therefore, not be possible to take Shri Ganesh Dey on strength as Chowkidar in this office. Shri Ganesh Dey has however not reported to this office so far. It may be mentioned that Dte. Gen. DE letter No. 105/11/ADM/DE of Dec 10 th 1992 has not been received in this office and a copy thereof was obtained from ADEO Agartala. Dte. Gen. DE may kindly be apprised of this factual position and requested to amend the order suitably.

4. It may be mentioned that Shri Mahesh Taye who has been working as Casual Mali against regular vacancy for last more than 2 years has been working satisfactorily. His case for regularisation alongwith all supporties documents has already been submitted vide this office letter No. 6016/ADM/ dated 12.3.93. It is submitted that his case is a fit case for regularisation in view of Director General, DE letter No. 105/11/ADM/DE dated 18.2.92 forwarded vide Directorate DE, EC letter No. 36001i/LC1/47 dated 24.2.92.

However, in view of your letter under reference it is submitted that either Shri Ganesh Dey be appointed against the regular vacancy of Mali (and not Chowkidar) in this office or in the alternative Shri Mahesh Taye, Casual Mali who already worked for more than 2 years be regularised and appointed in the said vacancy.

Lastly the case of Shri Mahesh Taye, Casual Mali for regularisation may kindly be considered sympathetically against any regular vacancy.

TESTED

9
Advocate.

Yours faithfully

Sd/- Illegible
Defence Estates Officer
Jorhat Circle

Copy to :

The Director General,
Defence Estates
Ministry of Defence
R K Puram, West Block-4
New Delhi-66

With ref. to his letter No. 105/11/ADM/DE dated 10th Dec. '92. It is submitted that the said Director General DE letter was not received in this office and a copy thereof obtained from ADEO Agartala. It may be mentioned that whereas no vacant post of Chowkidar in this office as explained in para-3. "Shri Ganesh Dey Chowkidar has been observed as Chowkidar at DEO Jorhat in an existing vacancy" vide your foregoing letter. It is requested that either Shri Ganesh Dey be appointed as Mali who has already worked more than 2 years be absorbed against the regular vacancy. Kindly refer to this office letter No. 6016/ADM/88 dated 29th Feb. '93 duly forwarded to Director General, DE vide Directorate De, EC letter No. 360175/LC-1/104 dated 12.3.93 (Copy enclosed). The case for regularisation of Shri Mahesh Tyae, Casual Mali has already been forwarded to Directorate De, EC vide this office letter No. 6016/ADM dated 12.3.93.

Sd/- Illegible
Defence Estates Officer
Jorhat Circle

TESTED
A
Advocate.

ANNEXURE-5

FOR PERSONAL KIND ATTENTION OF THE DIRECTOR GENERAL

Dated 17.8.93.

To :

The Director General, DE (By name)
 Govt. of India, Ministry of Defence
 R.K.Puram
 New Delhi-66.

Sub : Representation.

Respected Sir,

With humble submission I beg to submit the following lines for your kind and sympathetic consideration.

2. That Sir, I have been appointed as a casual Mali w.e.f. 8th May '91 in the office of the DEO Jorhat Circle, Jorhat initially for 5 months and then for 6 months. Likewise, I have been appointed for 6th months with a day break and again appointed for 6 months on the authority of Director, DE EC Calcutta letter No. 360175/LC-1/XI 104 dated 12th March '92 (Copy enclosed). But unfortunately no sanction for further period of 6 months w.e.f. 22nd March '93 onwards has not been received so far from the Director, DE, EC.

3. That Sir, proposal for regularisation in the post of Mali has already been submitted by DEO Jorhat vide his letter No. 6016/ADM dated 12th March '93 as in view of the Govt. of India, Ministry of Defence MF. 4(3)/89/D(Civ)-II dated 31st Jan. '91 (Copy enclosed), if any casual employee completes 2 years of services (with break period) he should immediately be regularised in the said post. But till date I have not been regularised for which I have been financially suffering to maintain my poor family.

4. Under the circumstances enumerated above I may kindly be regularised by your honour at the earliest for which I be grateful. If I am not regularised I shall be compelled to seek legal help for survival.

Yours faithfully,
 Sd/-

(MAHESH TAY)

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ANNEXURE-6

No. MF 4 (3)/89/D(Civ.II)
 Government of India
 Ministry of Defence
 New Delhi, the 31st January, 1992.

To, :
 The Chief of Army Staff
 The Chief of Air Staff
 The Chief of Naval Staff

Sub : Terms and conditions of services of casual
 Industrial and non-industrial employees.

Sir,

Orders of this Ministry issued vide letter No. 2 (17)/51/10885/D(Civ.II) dated 18.9.53 and No. 83482/EC-4 (Ors.4(Civ) (d) 13754/D(Civ.II) dated 24.11.1967 and amended from time to time regulating the terms and conditions of employment of casual industrial and non-industrial personnel have been reconsidered in consultation with Department of Personnel and Training. The President is now pleased to decide it at in supersession of all existing orders on the subject the terms and conditions of ~~new~~ employment of casual labour and regularisation of their services in the Service Hqrs. and Inter-Service and other organisations falling under the Ministry of Defence, No. 49014/2/86-Estt(C), dated 7.6.88 (Copy enclosed) for ready reference) earlier circulated vide this Ministry OM No. 4(4)/86/D(Civ.II) dated 27.6.88 and the provisions contained in this Ministry's OM No. 4(i)/88/D/Civ(II) dated 7.4.89 (Copy enclosed). Accordingly, the instructions contained in this Ministry's letter dated 18.9.53 quoted above shall cease to operate with immediate effect.

2. For the purposes of easy reference, the revised instructions are given below :-

- i. The policy regarding recruitment of casual employees enunciated in OM No. 4(1)/88/D(Civ.II) dated 7.4.89 shall be kept in view before recruitment of any casual workers.
- ii. The guidelines given in para 1(i) to (xi) of DOPT OM No. 49814/2/86-Estt(C) dated 7th June 1988 in the matter of recruitment of casual workers on daily wage basis, shall be strictly complied with.

TESTED

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 Advocate.

iii. There is a complete ban on engagement of casual workers for performing duties of Group 'C' posts. This has already been conveyed in M. of D. OM No. 4(3)89/D(Civ.II) dated 24.7.90 forwarding a copy of DOPT OM No. 4981/16/89-Estt.(C) dated 16.7.90. Casual workers already employed against Group 'C' posts on the date of issue of the above instructions shall be regulated in terms of the guidelines contained in DOPT OM No. 49814/16/89-Estt. (C) dated 22.10.90 (copies enclosed) for the purpose of regularisation and or termination of their services.

3. The regularisation of services of non-industrial casual personnel already appointed shall be regulated as under :-

- (a) The casual employees should have been engaged through Employment Exchange.
- (b) Casual employees appointed through Employment Exchange and possessing experience of a minimum of two years casual service in the office/establishment to which they are so appointed will be eligible for appointment to posts on the regular establishment ~~on that~~ availability of regular vacancies without any further reference Employment Exchange, subject to other conditions like reservation and qualification being satisfied.
- (c) Only a casual employee who has put in at least 240 days in case of 5 days week of casual service (including broken period of service) during each of the two years ** of service referred to above will be entitled to the benefit mentioned in (b) above.
- (d) For the purpose of absorption in regular establishment, such casual employees should be allotted to deduct from their actual age the period spent by them as casual employees and if after deducting this period, they are within the maximum age limit, they should be considered eligible in respect of maximum age.
- (e) With regard to continue of broken periods of service, for age relaxation guidelines given in DOPT O.M. dated 26.7.79 (copy enclosed) shall be followed.
- (f) Seniority of employees appointed to regular establishments will be reckoned with only from the date of regular appointment.

** " He/She must have completed 240 days (286 days in offices observing 5 days a week) of service in each of the two immediately preceding calendar years."

Accordingly, this Ministry's letter dated 24.11.67 quoted above as amended from time to time shall cease to operate with immediate effect.

This letter issues with the concurrence of Ministry of Defence Finance/AG) PB Group vide their U.O.No. 1685-PB dated 13.12.90.

Yours faithfully,

Sd/- x x x (C.A. Subramanian)
Under Secretary, to the Govt. of India.

TESTED

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No. 6016/ADM/

Office of the Defence Estates
Officer, Jorhat Circle, Jorhat-5

Dated the Sept. 92

To :

The Director, DE
Ministry of Defence
HQ. Eastern Command
13 Camac Street (7th Floor)
Calcutta-17

Subject : Regular Appointment of Shri Mohesh Taye
Casual Mali A.T.D.E.O. Jorhat on regular
basis.

Sir,

Reference your letter No. 360175/LC-1/XI/73
dated 30.9.92.

2. It is stated that as per sanction issued vide your
letter No. 360175/LC-1/XI/38 dated 4.2.91. Shri Mohesh Taye
is worked as a Casual Mali in DEO Jorhat with effect from
8th May '91 @ of 1/30 of pay at the minimum of Rs. 750/- in
the scale of pay Rs. 750/- to 940/- plus dearness allowances
as paid initially for a period of 5 (five) months. His name
was sponsored through local Employment Exchange and he
fulfilled the condition of eligibility prescribed
for in which his appointment is made. Copies of his
appointment under No. 6016/ADM/22 dtd. 6th May '91
and D.O. Part-II order No. 28/91 dated 18.5.91 is enclosed
herewith in this regard. He has thereafter been in continuous
service for 6 months. Again he has been appointed vide HQ.
EC (Dte, DE) No. 36016/LC-1/XI/62 dated 21 March '92 and DO
Pt-II No. 15/92 and 44/92 dated 4.11.92 (Copy enclosed).
However, he has been given in between the appointment order.

The individual has thus for completed a period of 1
(One) year 10 months of satisfactory service. Shri Mohesh Taye
is an honest and faithful as observed for his activities.

In view of above it is therefore strongly recommended
that his appointment in the post of Mali of this Office may
be regularised.

It is requested that your approval towards his regular
appointment order may be issued of the earliest as anxious
vestigation/bushes of bio Compound are cleaned and flowarine
plants and fruit and hedges planted by him are nurtured.

Reference may kindly be had in this to your office letter
No. 36015/LC-1/42 forwarding DG, DE New Delhi letter No. 185/11/
ADM/DE dtd. 2nd Feb '93 and Govt. of India No. MF.4(3)/89/D
(Civ-II) dtd. 31st Jan '1991 (Copy enclosed).

RECORDED

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RECORDED

Yours faithfully,

Sd/- Defence Estates Officer

22

Filed on 31/4/95
Court Seal

B. N. Chaudhury
Addl. Central Govt.
Standing Counsel
3.4.95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUJARATI BENCH
GUWAHATI

In the matter of :-

Original Application No. 6/95

Shri Mahesh Taye

....Applicant

- Versus -

Union of India & others

....Respondents

Written statement on behalf of Respondents No. 1 to 4

I, Shri Jojneshwar Sharma, Defence Estates Officer
Jorhat Circle, Jorhat, do hereby solemnly affirm
and say as follows :-

- 1) That I am the Defence Estates Officer, Jorhat Circle, Jorhat and Respondent No. 4 in the above case. I am acquainted with the facts and circumstances of the case. I have gone through the copy of the application (served on me) and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement, the other contentions and statements made in the application may be deemed to have been denied. I am competent and authorised to file this written statement on behalf of all the respondents.
- 2) That the respondents beg to state that the application is barred by limitation and the same is liable to be dismissed on that score alone.
- 3) That with reference to paragraph 6.1 of the application the respondents beg to state that the applicant was a casual employee working as a Mali in the Office of the DEO Jorhat for sometime. He belongs to scheduled Tribe Community and NOT Scheduled Caste as mentioned in the application ibid.

My W. O. be
served on
applicant
3/4/95

Contd.. p/2-

(2)

4) That with reference to paragraph 6.2 of the application the respondents beg to state that he worked as a Casual employee in DEO's Jorhat Office for 321 days in the first spell and two spells of six months duration with a day's break in-between and not for "more than Two years" as mentioned in the applicant's application.

5) That with reference to paragraph 6.3 of the application the respondents beg to state that the applicant has no right to claim for regular appointment as he was appointed as a Casual Mali for specified periods of time.

6) That with reference to paragraph 6.4 of the application, the respondents beg to state that as he was appointed on Casual basis, he was paid Salary @ Rs.750/- plus D.A. as maximum admissible per month i.e. at the rate of 1/30 of the pay at the minimum of the relevant pay scale plus DA admissible for work's of 8(Eight) hours a day. This is not illegal and is actually in line with rules regulating pay and allowances of casual employees.

7) That with reference to paragraph 6.5 of the application, the respondents beg to state that as mentioned at para 4 above he did not work for more than two years as mentioned by the applicant in his application.

8) That with reference to paragraph 6.6 of the application, the respondents beg to state that there was a regular post of Mali, but Shri Mahesh Taye (applicant) was appointed on Casual basis as the posting of a regular incumbent by the competent authority was awaited. But as stated earlier, the applicant was not engaged for more than two years as stated by him in the application.

9) That with reference to paragraph 6.7 of the application the respondents beg to state that Shri Ganesh Day was working in the OFFICE of the Asstt. Defence Estates Officer, Agartala as a Casual Chowkidar with effect from 29-5-89 to 28-5-93 i.e. for 4(four) years and accordingly he was absorbed and transferred to DEO Jorhat as Chowkidar vide Director General, DE, New Delhi letter No.105/11/ADM/DE, dated 10-12-92. But as there was no vacant post of Chowkidar in DEO's Office Jorhat, Shri Ganesh Day

(3)

was absorbed as Mali in the Office of the Defence Estates Officer Jorhat Circle with effect from 31-5-93 onwards against a vacant regular post of Mali.

- 10) That with reference to paragraph 6.8 of the application the respondents beg to state that although the respondents No.4 forwarded the letter to higher authority to regularise the applicant the competent authority did not consider the said proposal favourably.
- 11) That with reference to paragraph 6.9 of the application the respondents have no comments to offer.
- 12) That with reference to paragraph 6.10 of the application the respondents beg to state that the engagement of the applicant Shri Mehesha Taye as casual Mali discontinued with effect from 23-3-93, and hence no fresh question of termination arises.
- 13) That with reference to paragraph 6.11 of the application the respondents have no comments, as those are administrative instructions containing norms of employment on casual basis. As stated in para 4, 8 and 12 above, the applicant's engagement discontinued as a casual Mali w.e.f. 23-3-93. He was not engaged for 206 days of service in each of the two immediately preceding calendar years, prior to his disengagement on 22-3-93.
- 14) That with reference to paragraph 6.12 of the application, the respondents beg to state that the engagement of the applicant was discontinued with effect from 23-3-93 and this he is not entitled to claim for salary. Since 23-3-93 the applicant never reported in the Office of the Defence Estates Officer, Jorhat.
- 15) That with reference to paragraph 6.13 of the application the respondents beg to state that there is no vacant post of Mali in the Office of the Defence Estates Officer, Jorhat in view of the position mentioned at para 9 above. Neither can he claim to have accrued any right to a regular post as he was engaged as casual Mali for specified and disjointed periods of time.

(4)

16) That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with, costs.

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

I, Shri Jojneswar Sharma, Defence Estates Officer, Jorhat Circle, Jorhat do hereby solemnly affirm and state that what is stated in para above is true as per the records available and I have not deliberately suppressed any material fact.

I sign this Verification on this the day 3rd April of 1975 at Jorhat.


DEPONENT

DEFENCE ESTATES OFFICES
JORHAT CIRCLE
JORHAT - 785001