

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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closed date-14/11/2000

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closed date-04/8/98

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R.A/C.P No. 4/2000

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Affidavit reply in C.P-4/2000 pg-1 to 11

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH ::::::::::: GUWAHATI

ORIGINAL APPLICATION NO. 40/96
 MISC. PETITION/CONT EMP'T PETITION/REVIEW APPLICATION NO. _____
 (O A). _____

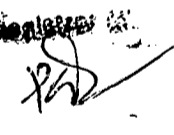
Smt. Anona Kalita APPLICANT(S)

VS.

Union of India RESPONDENT(S)

Mr. B.K. Sharma, Mr. B. Mehta Advocate for Applicant(s)
Mr. S. Sarma

Mr. G. Sarma, Add. C.G.S. Advocate for Respondent(s)
Mr. M. Dutta in Reply No. 6.

OFFICE NOTE	DATE	O R D E R
This application is in form and within time C. F. of Rs. 50/- deposited vide IPO/BD No. 311409 Dated 26.2.96 	13.3.96 (1)	<p>Learned counsel Mr B.K. Sharma for the applicant.</p> <p>Learned Addl. C.G.S.C., Mr G. Sarma for the respondent Nos.1 to 5.</p> <p>Mr B.K. Sharma moves this application unlisted on the ground of urgency. Allowed.</p> <p>Perused the contents of the application the grievances of the applicant and reliefs sought. The application is admitted. Issue notice on the respondents by registered post. Four weeks time for written statement. List on 22.4.1996 for written statement and further orders.</p> <p>Mr B.K. Sharma prays for interim order. Issue notice on the respondents to show cause as to why the interim relief prayed for in this application should not be granted. List on 22.4.96 for show cause and order on interim relief prayer. Pending disposal of the show cause and further order the respondents/are directed to allow the applicant to continue in her service and to keep the orders dated 27.11.1995, Annexure-3, and 29.2.1996, Annexure-5, to this application</p>

(2)

OFFICE NOTE

DATE.

ORDER.

13.3.96

(2)

in abeyance. Liberty to the respondents to apply.

Copy of the order may be furnished to the counsel for the parties.

[Signature]
Member 13/

nkm

22.4.96

(3)

Show cause has not been submitted. Written statement has been submitted and served on Mr S.Sarma for the applicant today. Leave note of learned Addl.C.G.S.C Mr G.Sarma.

List for order in the presence of learned Addl.C.G.S.C. on 9.5.96.

[Signature]
Member

pg

9.5.96

(4)

Learned Addl.C.G.S.C Mr G.Sarma for the official respondents.

He has submitted written statement. Copy of the same was already served on the counsel of the applicant

Learned counsel Mr M.Deka for respondent No.6 seeks time for filing written statement. Learned Addl.C.G.S.C Mr G.Sarma submits for early hearing of this O.A. as it involves termination of service.

List for hearing on 12-6-96. In the meantime respondent No.6 may submit his written statement with copy to the other parties.

[Signature]
Member

Order dt. 13.3.96

to the counsel of parties
r.no. 599-600 dt. 20.3.96

[Signature]
15/3

Requisites are now

on 21.3.96 & issued
r.no. 638-43 dt. 26.3.96

[Signature]
22/3

Notice served on

R.no. 2, 3, 4, 5 & 6

[Signature]
18/4

valuation filed

by Repet. No. 6.

[Signature]

30.4.96

W/S submitted
on behalf of Repet.

[Signature]

OFFICE NOTE

DATE

ORDER

9.9.96

(9)

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

Reply to rejoinder has been submitted and a copy of which served on the counsel of the applicant. Case ready for hearing.

List for hearing on 9.10.96.

bc
Member

pg

bc
10/9

9-10-96

(10)

Learned counsel Mr.S.Sarma for the applicant. List for hearing on 27-11-96.

bc
Member

*List when Division Bench is available.
27/11/96.*

lm

bc
9/11

31.1.97

(11)

To be listed for hearing on 2.4.97.

bc
Member

bc
Vice-Chairman

nkm

2.4.97

(12)

On the ~~prayer~~ prayer of Mr B.K.Sharma learned counsel for the applicant the case is adjourned till & 22.4.1997.

bc
Member

bc
Vice-Chairman

*1) Notices duly served on Respts nos. 2-6
2) Respat 1 is still available w/ statement has been filed
3) Rejoinder & Reply to Rejoinder has been filed*

pg

bc
2/4

21.4.97

*NO memo of appearance has been filed by the Addl. C.G.S.C.
21/4/97.*

(5)

12.8.96

(13)

Mr S.Sarma for the applicant. Mr S.Ali, Sr.C.G.S.C for the respondents List for hearing on 10.9.96.

[Signature]
Member

pg

[Signature]
12/8

*w/ statement - & Rejoinder by
sub b/w
8/10*

10-9-96

(14)

Leave note of Mr. B.K. Sharma. None for the respondents. List for hearing on 9-10-96.

[Signature]
Member

lm

[Signature]
10/9

9-10-96

(15)

Learned counsel Mr.S.Sarma for the applicant. List for hearing on 27.11.96.

[Signature]
Member

lm

[Signature]
9/10

*w/ statement - & Rejoinder
by sub b/w
8/10*

11.3.97

(16)

This case is ready for hearing. Let the case be listed on 2.4.97 for hearing.

[Signature]
Member

[Signature]
Vice-Chairman

nkm

[Signature]
12/3

2.4.97

(17)

On the prayer of Mr B.K.Sharma the case is adjourned till 9.5.1997 for hearing.

[Signature]
Member

[Signature]
Vice-Chairman

pg

[Signature]
2/4

9.5.97

Left over.

List on 13.6.1997.

(18)

[Signature]

Member

[Signature]

Vice-Chairman

trd

[Signature]
13/5

16-6-97

(19)

Adjourned. List on 25.7.97 for hearing.

By order.
[Signature]
16/6

[Handwritten notes]

Mr. M. Sekar ^{Adv.} vs *[Handwritten]* 25.7.97
name also appearance (20)

On the prayer of Mr S. Sarma, learned counsel for the applicant the case is adjourned to 30.7.97.

[Handwritten notes]

29-7-97

[Signature]

Member

[Signature]

Vice-Chairman

[Handwritten] appearance pg 29/7
Filed by Mr. G. Sharma
Addl. C.G.S.C.

30.7.97

(21)

Mr S. Sarma, learned counsel for the applicant prays for a short adjournment. Let the case be listed on 9.9.97 for hearing.

[Handwritten] reply to the rejoinder
vs *[Handwritten]*

nkg
31/7

[Signature]

Member

[Signature]

Vice-Chairman

31.7.97

is ready for hearing.

9.9.97 (22)

Left over. List on 4.12.97.

By order

[Handwritten signature]

4.12.97

The case is otherwise ready for hearing. List it for hearing on 24.2.1998.

[Signature]
Member

[Signature]
Vice-Chairman

The case is ready as report of W/S Repaired

nkm
[Signature]
3/12

[Signature]
23/2

24.2.98

There was a reference. List for hearing on 8.6.98.

By order.

8.6.98. Case to be listed for hearing on 9.8.98

[Signature]
By order

The case is ready for hearing.

9.6.98. Def over. List on 12.6.98

[Signature]
By order

12.6.98

Heard Mr S.Sarma, learned counsel for the applicant, Mr G.Sarma, learned Addl.C.G.C for respondents No.1 to 5 and Mr M.Deka, learned counsel for respondent No.6. Hearing concluded. Judgment reserved.

Issue notice to the Superintendent of Post Offices, Guwahati Division, Guwahati and Sub-Post Master, Kamakhya Post Office, Kamakhya to appear before this Tribunal on 22.6.98 at 10-30 A.M with the relevant records. In Case of Failure to appear and produce records before this Tribunal action will be taken.

List on 22.6.98 for production of records

[Signature]
Member

[Signature]
Vice-Chairman

pg

22-6-98

The Sub-Post Master, Kamakhya Post office Kamakhya is present as per order dated. 12-6-98 and some records have also been produced. The Superintendent of Post Office Guwahati Division, ~~xxx~~ is not present.

8

22-6-98

(23)

Issue notice to show cause why contempt proceedings should not be drawn up against him.

List it on 25-6-98 for orders for production of records. Thereafter, the case will come up for hearing on 8-7-98.

Pl. comply order dated 22.6.98.

nd
23/6

be
Member

SB
Vice-Chairman

24.6.98

lm

Copy of order dtl. 22.6.98 and notice issued to the records No. 2110/98 head.

MS
23/6

25.6.98

28

The judgment was reserved, but as the records were not placed we directed Mr G. Sarma, learned Addl. C.G.S.C., for production of the records. In spite of best effort Mr G. Sarma could not produce the records. Accordingly we directed the Superintendent of Post Offices to appear before this Tribunal on 22.6.98. The notice was duly received. However, in spite of that the Superintendent of Post Offices did not appear. Therefore, we issued show cause notice as to why contempt proceeding should not be drawn up against the Superintendent of Post Offices. Registry to register a contempt case and fix it on 9.7.98.

The judgment is, however, reserved.

be
Member

SB
Vice-Chairman

nkm

pts, Rejoinder as Reply to the Rejoinder to sum L.W.
14/7

8.7.98

29


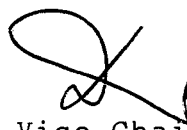


The records have since been produced. Mr S. Sarma, learned counsel for the applicant prays for sometime to peruse the records and thereafter make further submission in the matter. He may look to the records today in the court and thereafter the records shall be kept in safe custody. List it on 15.7.98.

be
Member

SB
Vice-Chairman

nkm

9

Notes of the Registry	Date	Order of the Tribunal
	15.7.98	<p>Heard the learned counsel for the parties. Hearing concluded. Judgment reserved.</p> <p> Member</p> <p> Vice-Chairman</p>
<p>2.9.98</p> <p>Copies of the Judgment have been sent to the D/Sec. for issuing the same to the parties through Regd. W.R. A.D.</p> <p>vt.</p>	28-8-98	<p>Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No order as to costs.</p> <p>Interim order dated 13-3-96 stands vacated.</p> <p> Member</p> <p> Vice-Chairman</p>
<p>copies of the issued vide A. No. 2499 to 2505 dt. 3.9.98</p> <p>vt.</p> <p>21.9.98</p>	lm	

Notes of the Registry	Date	Order of the Tribunal
<p>[Faint, illegible text in the first column, possibly bleed-through from the reverse side of the page.]</p>	<p>[Faint, illegible text in the second column, possibly bleed-through from the reverse side of the page.]</p>	<p>[Faint, illegible text in the third column, possibly bleed-through from the reverse side of the page.]</p>

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

O.A.No. 40 of 1996.

DATE OF DECISION.. 28-8-1998.....

!! Smt Anima Kalita (PETITIONER(S))

S/Shri B.K.Sharma, S.Sarma ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors. RESPONDENT(S)

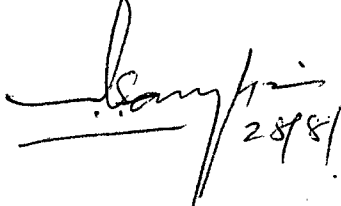
Shri G.Sarma, Addl.C.G.S.C for
respondents 1-5 and Sri M.Deka
Advocate for respondent No.6. ADVOCATE FOR THE
RESPONDENTS.

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 ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member


28/8/98

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original 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 Patowari,
C/O Lambadar Deka,
Fatasil Ambari, Near Kali Mandir,
Guwahati. . . . Respondents.

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

O R D E R

G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

The applicant works as an Extra Departmental Delivery Agent (EDDA forshort) 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,

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.

2. 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 Sub 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 Bharalumukh and Pub-Sarania 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 unauthorised 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 9.12.1994 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 deem 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 or scheme. 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 hereinabove 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 (Conduct 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

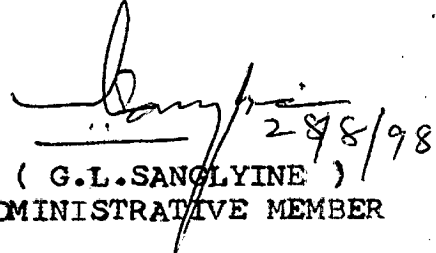
No.6 to the post of EDDA Kamakhya Sub Post Office.

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

No order as to costs.



(D.N.BARUAH)
VICE CHAIRMAN



(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 40 of 1996.

Smt. A.Kalita...Applicant.

-versus-

Union of India & ors.
....Respondents.

SYNOPSIS OF THE CASE

The applicant in the instant application has challenged the illegal order of termination (Annexure-3) order dated 27.11.95, and order dated 29.2.96 by which respondent No.6 has been given appointment on temporary basis.

By this application the applicant has also prays for the temporary status and regularisation of her pursuant to the scheme prepared by the respondents for granting of temporary status and regularisation.

ANNEXURE- 1 at page 12 is the appointment order dated 9.12.94 by which the applicant got her appointment under the respondents.

ANNEXURE- 2 at page 13 is the certificate dated 5.3.96 issued to the applicant certifying her service as a continuous one.

ANNEXURE- 3 at page 14 is the impugned order of termination dated 27.11.95 by which her service was sought to be terminated.

ANNEXURE- 4 at page 15, is the representation dated 9.2.96 by which the applicant placed her candidature before the respondents for her regular appointment.

ANNEXURE- 5 at page 16 is also the impugned order by which respondent No 6 has been given the appointment.

The aforesaid O.A. was taken up for admission item on 13.3.96 and the Hon'ble Tribunal was pleased to admit the application with an interim order protecting the interest of the applicant.

The aforesaid O.A. came up before the Hon'ble Tribunal for hearing and was heard in part and the Hon'ble Tribunal was

further pleased to direct the respondents to produce the records of the case and liberty has been given to the counsel for the parties to look into the records of the case.

The respondents have produced the records of the case and from the records the following gist is placed before the Hon'ble Tribunal :

1. 16.9.94 :- Appointment order of the applicant.
2. 26.9.94 :- Leave order of Sri Bipin Ch. Mahanta w.e.f.24.8.94 to 21.11.94.
3. 27.11.95 :- Termination order.
4. 11.12.95 :- Put off duty order of Sri Bipin Ch Mahanta.
5. 12.12.95 :- Letter addressed to the Employment Exchange Officer, giving the terms and conditions as follows.

1. Candidate must be resident under Kamakhya Post Office's jurisdiction.

2. Age of the candidate.

3. Candidate must pass at least class VIII

4. SC/ST/Retrenched ED may be given preference subject to fulfillment of other qualification.

6. 12.12.95. :- Similar letter issued to the District Employment Officer, with similar terms and conditions.

7. 9.1.96 :- Letter forwarding 4 names from the Employment Exchange.

8. Application of one Sri D,K.Deka. of Kamakhya,Guwahati.

9,10,11, Document of Sri Deka.

12. Application of one Sri Rupak Dutta. of Pandu, Guwahati.

13 & 14 Documents of Sri Dutta.

15. Application of Respondent No 6 Harapati Patowari, of Fatasil Ambari, Guwahati.

16 & 17 Document of Sri Patowari.

18. Application of Md. D. Rahman of Baihata Chariali.

19 to 27 Documents of Mr. Rahman.

28. 22.1.96 :- Call letter for interview which was scheduled to be held on 9.2.96.

9.2.96 :- Office note :-

(a) A Deka did not attend.

(b) D.Rahman ...did not produce the original records.

(c) R.Dutta.... did not produce the original records.

(d) H.Patowari (Respondent No-6) ... Selected.

29. 29.2.96 :- Appointment order of Respondent No 6 on temporary basis.

30. 29.2.96 :- Do.

SUBMISSION

1. The service of the applicant is required to be regularised as pre the scheme as she has complied more than 240 days of continuous service. Full Bench Judgment Vol-III page 209 and judgment and order dated 27.7.95 passed in O.A. No 188 of 91.

2. The respondent have acted illegally by appointing respondent No 6 on temporary basis in the place of applicant. Law is well settled that one ad-hoc can not be replaced by another.

3. From the records it is clear that Respondent No 6 is also going to be appointed on temporary basis.

4. From the records it is clear that retrenched employee should get preference over the general candidate.

5. From the records it is clear that the Respondent No 6 does not fulfill the condition No 1 (S.No 5 (1)) as he is not a permanent resident under the jurisdiction of Kamakhya P.O.

7
MOC LMO
45/24/88-5 PB, F
dt. 17.5.89
Bridg -
EOTAs included -

12 MAR 1996
 O.A. NO. 40 OF 1996

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GAUHATI BENCH.

BETWEEN

Smt Anina Kalita, Applicant.

Versus.

Union of India & Ors. Respondents.

I N D E X

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Registration No. O.A. 40/96

Date. 12.3.96

Recd
 Golap Jaisankar
 No. 45
 13.3.96

Registrar CAT/Ghy.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.
GUWAHATI BENCH.

Filed by the
through Siddh

O. A. NO. 46 OF 1996.

BETWEEN

Smt. Anima Kalita,

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

... Applicant.

AND

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. Supdt. of Post Office,
Guwahati Division, Guwahati-1.
5. Sub-Post Master,
Kamakhya Post Office,
Kamakhya, Guwahati-10.
6. Harapati Patowari,
C/o. Lambadar Deka,
Fatasil Ambari *Near Kali
Guwahati, Mandir.* ... Respondents.

DETAILS OF THE APPLICATION :

1. Particulars of the order against which the application
is made :

The application is directed against the order issued in the Assistant Superintendents of Post Offices, Gauhati (West) Sub-Division, Gauhati-781 001 vide Memo No. A1/Kamakhya dtd 29.2.96 offering provisional appointment to respondent No.6 by way of seeking illegal termination of the services of the applicant (Annexure 5). The application is also directed against order dtd 27.11.95 (Annexure 3).

2. Jurisdiction of the Tribunal :

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

3. Limitation :

The applicant further declares that the application is within the limitation prescribed in Sec. 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case :

4.1 That the applicant is a citizen of India and a permanent resident of Assam and as such, is entitled to all the rights and protections guaranteed by the Constitution of India and Laws framed thereunder.

4.2 That the applicant hails from a very poor family and thus, she could not prosecute further studies after passing Class X. At her early age she got married and just after the birth of their two children suddenly her husband passed away. After the death of her husband, she was passing her hard days with two minor children. She left no stone unturned to get a job and ultimately she got a part time job in the Kamakhya Post Office.

4.3 That the applicant begs to state that she had been working as a part timer for several years in the said Post Office and in the year 1994, August, she has been appointed as Extra Departmental Delivery Agent (EDDA) in the said Post Office at a monthly salary of Rs. 1087/-. The applicant has

been working as an EDDA till date without any break and without any blemish and to the utmost satisfaction of all concerned.

A copy of letter dt 9.12.94 and 5.3.96 issued by the Sub Post Master showing her spell and performance is annexed herewith and marked as ANNEXURE 1 & 2.

4.4 That as stated above, the applicant has been serving as an EDDA since long back in the Kamakhyā Post Office without any break. It will be pertinent to mention here that one Sri Bipin Chandra Mohanta who was an employee (EDDA) of the said Post Office has been no longer in the said Post Office and the applicant was working in his place. Sometime the applicant has also worked as Postman in addition to her prescribed duty of EDDA. Hence it is an admitted position that the applicant has even worked against some temporary arrangements in more responsible posts in addition to her own duties and she has got all the requisite qualification in addition to the above-mentioned experience to hold the post of EDDA. Be it stated here that the said Sri Mohanta has not come back and has abandoned the post of EDDA presently being held by the applicant.

4.5 That the applicant was shocked when she got an order dtd 27.11.95 issued by the Asstt. Supdt. of Post Offices directing respondent no. 5 to terminate her services but till date without any break and blemish she has been putting her sincere service in the said Post Office. However, no effect has been given to the said order and also to the order dtd. 29.2.96 mentioned ^{below} and she is still continuing in her service indicating

that there is need for her service. However, now she is under threat of lossing her job in view of appointing the respondent no. 6. Till date, he has not joined in the Post and the applicant is holding the Post. Thus there is no impediment against passing an interim order protecting the interest of the applicant.

A copy of the order dt. 27.11.95 is annexed herewith and marked as ANNEXURE - 3.

4.6 That the applicant begs to state that the respondents once made an enquiry to the local Employment Exchange Gauhati, asking for sponsoring names of candidate for the post that has been holding by the applicant. Immediately on getting the information regarding the regular appointment she made enquiry to the concerned authority and she was told that the minimum qualification for that post on which she has been serving since long is Class VIII. On getting the information she made a representation on 9.2.96 to the Asstt. Supdt. of Post Offices, West Sub-Division, and offered her candidature stating all the relevant dates ~~back~~ including the experience that she has gathered meanwhile.

A copy of the representation dtd 9.2.96 is annexed as ANNEXURE 4.

4.7 That to the shock and dismay of the applicant, the respondents have issued one ~~after~~ Office Memorandum to the respondent No. 5 to make arrangement for appointment of one Sri Harapati Patowary (Respondent No.6) dtd 29.2.96. The Memorandum itself clearly shows that the respondent no. 6 will be appointed on a provisional basis. The applicant being aggrieved by the action/inaction of the respondents represented to the respondents that her case should have been considered as she has been working as an EDDA and her services

should have been extended with further consequence of regularisation, giving weightage to her ~~past~~ past services and that there has been no necessity to call for new/fresh appointee in place of experienced and seasoned applicant.

A copy of the said memorandum dtd 29.2.96 is annexed herewith as ANNEXURE '5'.

4.8 That as stated earlier, that the applicant has put ⁱⁿ several years of service in different categories and finally as EDDA in the said Post Office. In addition to her prescribed duties, she has been asked to hold other responsible posts time and again and as such there is no dispute regarding her experience in the post. It will be pertinent to mention here that very recently she was asked to perform duties of Postman which is a higher post for more than two months in addition to her prescribed duty as EDDA. Almost every year the applicant has been representing to her concerned authorities for regularisation of her post but only verbal and sympathetic assurances have been given to her.

4.9 That the applicant begs to state that the action of the respondents in offering employment to an out-sider and inexperienced person in place of experienced and seasoned one is in violation of the laws prevalent and contrary to the provisions laid down in the Constitution of India and laws framed thereunder. The respondents ought not to have made arrangement to appoint the private respondent (Respondent No.6) that too in a provisional basis in place of the applicant whereas the applicant fulfils all the requisites to hold the post in addition to experience in the said post already gathered.

4.10 That the applicant begs to state that she has put several years of continuous service in the said post and as such she is entitled to get at least ~~of~~ temporary status with the consequence of regularisation as per the scheme of Central Govt. the case of the applicant is also squarely covered by the latest full Bench verdict relying upon the said scheme (Casual labourers - Grant of Temporary Status and Regularisation) Scheme issued by the President dtd 12.4.91. It will be pertinent to mention here that in the said Full Bench Judgment, the EDDAs are held as Casual Labourers and the 'employees' who have completed 240 days of continuous work should be given temporary status with the consequence of regularisation. Hence, there is no earthly reason as to why the services of the applicant should not be protected with temporary status by the respondents.

The applicant further begs to state that instead of granting her temporary status the respondents with a malafide intension has been making arrangement to get rid of applicant's service forever, without any reason and malice, giving shelter to an inexperience out-sider (respondent No.6).

The applicant crave leave of this Hon'ble Tribunal to produce the Scheme dt 12.4.91 issued by the President at the time of hearing of the instant O.A.

4.11 That the applicant states that she has been working continuously several years ~~with~~ in the said Post Office as an EDDA and hence there is no reasonable ground to appoint on promotional basis some fresh candidates where she has been working in the said post for several years. The respondents in the instant case, by-passing the provisions of administrative jurisprudence has acted adversely and in gross violation of the principles of natural justice. If such an action is

allowed the applicant will suffer irreparable loss and injury. In any case, the service of the applicant cannot be replaced by a provisional service.

4.12 That the applicant submits that if her services terminated by way of such an illegal mode she will be nowhere and thus may lead to the verge of starvation. The applicant is a poor lady and in these hard days, it will be very difficult for her to survive without a job with her two school going children.

4.13 That the applicant states that after her appointment as an EDDA she did not go for ~~xxx~~ any obj and now the manner in which her services is going to terminate, has rendered her a lady in the street with her two minor school going children. Because of the services of the applicant, which till date she has been serving, she has lost many other chances of employment and in this way she also lost her age. Hence the action of respondents giving someone her job is in violation of the principles of natural justice. It will be pertinent to mention here that instead of giving her temporary status, the respondents did not even released her due salary from December, 1995, till date. The applicant prays for a direction from this Hon'ble Tribunal to release her due salaries.

5. Grounds for relief with legal provisions :

5.1 For that prima facie the action/inaction of the respondents towards the regularisation of applicant's service as well as the new arrangement for appointing one fresh candidate on provisional basis is in gross violation of the principles of natural justice and administrative fair play.

5.2 For that the respondent should have not made any arrangement towards the appointment of respondent no. 6 (private respondents) in place of the applicant who has also fulfilled all the requisites and well experienced to hold the post.

5.3 For that the law is well settled that one who completed 240 days of continuous service should get temporary status with the consequence of regularisation as per the scheme of 1991 as stated earlier which was reflected in the Full Bench judgment.

5.4 That in any view of the matter the respondents ought not to have acted contrary to the rules/schemes, which are prepared by themselves and ought not to have acted in violation of laws laid down by the Apex Court.

5.5 For that in any view of the matter, the respondents should have given the protection of temporary status to the applicant with further consequence of regularisation of the services and they ought not to have denied her due benefit.

5.6 For that in any view of the matter, the respondents should have released the salary from December 1995 of the applicant as soon as possible.

5.7 For that in any view of the matter, the benefit of regularisation of the applicant's service cannot be denied.

5.8 For that in any case the services of the applicant cannot be replaced by an provisional appointee which is in gross violation of the laws holding the field.

The applicant craves leave of this Hon'ble Tribunal to advance more grounds at the time of hearing of the instant O.A.

6. Details of remedies exhausted :-

The applicant declares that she has got no other alternative remedies available to her.

7. Matter not previously filed or pending before any Court :

The applicant further declares that the matter regarding which this application has been made is not pending before any court or any other Bench of the Tribunal.

8. Relief sought :-

In view of the facts and circumstances stated above, the instant application be admitted, records be called for and on perusal of the same upon hearing the parties on the cause or causes that may be shown be pleased to grant the following reliefs :-

- (i) To set aside and quash the impugned order at Annexure 5 and 3 dt. 27.11.95 and 29.2.96 respectively.
- (ii) To direct the respondents to grant temporary status to the applicant with the consequence of regularisation of her service with immediate effect.
- (iii) To direct the respondents not to appoint any outsider in place of her present post of EDDA in the said Post Office.
- (iv) To direct the respondents to release her salaries which is due from December'95 immediately.
- (v) Cost of the application.

Any other relief or reliefs to which the applicant is entitled to under the facts and circumstances of the case.

9. Interim relief prayed for :

The applicant in the instant application prays for an interim order directing the respondents not to appoint any one in her ~~present~~ ^{and to stay the orders dt. 27.11.95 and 29.2.96 (Annexure -5 and 3)} post of EDDA and further she prays for an interim order directing the respondents to release her salaries ^{immediately} ~~as soon as possible~~, during the pendency of this instant application.

10. The application is filed through Advocate.

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

i. No. of I.P.O. :-	09 311409
ii. Name of the Post Office :-	G.P.O
iii. Date :-	26.2.96
iv. Payable at :-	G.P.O / Guwahati

12. List of enclosures :-

As indicated in the Index.

VERIFICATION :

I, Smt. Anima Kalita, wife of late Chandradhar Kalita, Post Office Kamakhya, Guwahati-781 010, at present working as EDDA under the respondent No. 4, hereby verify that the contents from 1 to 12 are true to my personal knowledge and belief and that I have not suppressed any material fact.

Dated, Guwahati.

the 12th March, 1996.

Smt Anima Kalita

Signature of the applicant.

Memo No. A I- Kamakhya Dated 9.12.94.

' O R D E R ' .

Smti. Anima Kalita ,afficeating E.D.D.A.
Kamakhya P.O. is now continuing is permitted to
work as E.D.D.A. Kamakhya till joining of Shri
Bipin Chandra Mahanta who is absenting from duty
without authority , pending further action as deem
fit .

Sd/- N.Das ,

Asstt. Supdt. of Post ,
Office GH(W) Sub-Division ,
Guwahati -1.

*Attn
for
[Signature]*

ANNEXURE - 2

O/O Sub Post Master.

Kamakhya.

Gauhati - 10.

Dated, 5.3.96.

To whom it may concern.

Certified that Smt Anima Kalita, a part time ~~an~~ employee of this office, having been appointed as Extra Dipertmental Delivery Agent at Kamakhya P.O. vide letter No A 1 - Kamakhya dated 9.12 94 of the Asstt Supdt of posts ~~XXXX~~ / GH(4) Sub Division ~~XXXX~~ GH - 1. has been working as such till date with satisfactory performance.

S/A. # =

Sub Post Master Kamakhya

Gauhati- 781010. H.S.G II

Aditya G. D. S. S.

Dept. of Posts India.

O/O the ASP/ Gauhati (West) Sub. Divn.

No A-1/Kamakhya.

Dated at Gauhati the 27.11.95.

The arrangement made against the posts of EDDA Kamakhya P.O. vide this office memo of even No dated 9.12.94 is hereby ordered to be terminated with immediate effect .

The delivery works relating to the post of EDDA Kamakhya is entrusted to the postman till alternative arrangement is made .

Sd/-
Asstt. Supdt. of Post Office
Guwahati West Sub. Divn.

Copy to :

1. The Sr. Post Master, Guwahati G.P.O. for kind information and n/a.
2. The SPM Kamakhya for information and n/a. He will please relieve Smt. Anima Kalita (who is doing delivery work against the post of EDDA at present) without delay.
3. Smt. Anima Kalita through SPM Kamakhya for information.
4. S. Pre.

Sd/-
Asstt. Supdt. of Post Office
Guwahati West Sub-divn.

Attoys
Wint

To

The Assistant Superintendent of Post Offices,
Guwahati West Sub-Division,
Guwahati-781001.

Dated Kamakhya, the 9.2.96

Through the SPM Kamakhya.

Sir,

I beg to state that I have been working as EDDA since 1994 in the Kamakhya Post Office. It is learnt that vide your Notice No.A.1/Kamakhya dated 11.12.1995 you have invited names from the Employment Exchange for the post of EDDA having Matric pass qualification. From your above notice it can also be understood that for the post of EDDA Class VIII passed candidate is required.

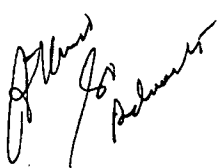
Since I have been working under you as EDDA, I beg to request you to recommend my name as one of the candidate. I hope that the Employment Exchange has sent to you my candidature as well as relevant particulars if not otherwise I may be allowed to sit in the selection test for the above post. Being a poor widow woman I would request your Honour to consider my case for appointment as EDDA. Detailed particulars relating to my candidature is furnished below:

1. Name : Smt Anima Kalita
W/o Late Chandidhar Kalita
2. Qualification : Class X
3. E.E. Regd. No. : 544195
4. Code No. : Lo 2.10

Yours faithfully,

Sd/-

(Anima Kalita)



Dept. of Posts, India

O/o the Asstt. Supdt. of Post Offices,
Guwahati(West) Sub Dn. Guwahati-781001

Memo No.A1/Kamakhya

Dated at Guwahati, the 29/2/96

Whereas the Post of Extra Departmental Delivery Agent at Kamakhya P.O. has become vacant and it is not possible to make regular appointment to the said post immediately, the undersigned has decided to make provisional appointment to the said post till finalisation of disciplinary proceedings against Sri Bipin Ch Mahanta or regular appointment whichever is earlier.

2. Sri Harapati Patowary, c/o Lambodar Deka, Fatasil Ambari is offered the provisional appointment. He should clearly understand that the provisional appointment will be terminated when regular appointment is made and he shall have no claim for appointment to any post.

3. The undersigned also reserves the right to terminate the provisional appointment at any time before the period mentioned in para 1 above without notice and without assigning any reason.

4. Sri Harapati Patowary will be governed by the ED Agents (Conduct and Service) Rules 1964 as amended from time to time and all other rules and orders applicable to Extra Departmental Agents.

In case the above conditions are acceptable to Sri Harapati Patowary, he should sign the duplicate copy of this memo and return the same to the undersigned immediately.

Copy to

Sri Harapati Patowary,
C/o Lambodar Deka (near Kalimandir),
Fatasil Ambari
(Guwahati).

*1) Ad hoc appointee cannot be replaced by another which appointee.
2) Temp. status admissible as per full bench
3) Regularisation
4) ED Agents (Conduct and Service) Rules 1964 as amended from time to time cannot be terminated in this manner.
1991/1/1525*

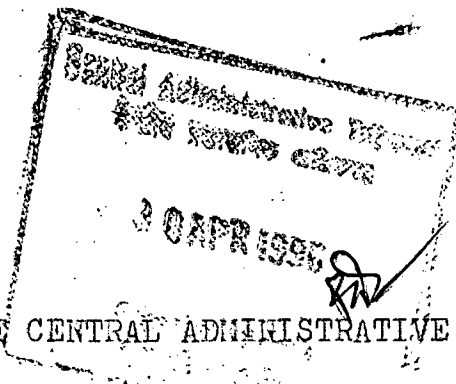
Attn: Sr. Asstt.

: 2 :

2. The Sr. Postmaster, Guwahati G.P.O.
3. The SPM, Kamakhya for information and n/a.
4. Spare.

Sd/-
Superintendent of Post Offices
Guwahati West Sub-Division,
Guwahati-781001.

Atkins
for
Atkins



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

18
Filed by
GULAB SARKAR
Asst. Central Govt
Starling Counsel
Central Administrative Tribunal
Guwahati Bench, GUWAHATI
19.4.96

Dr. Super
Post Office
781001
Guwahati-781001

In the matter of :

O.A.No.40 of 1996

Smt. Anima Kalita ...Applicant.
-Vs-
Union of India and others.
... Respondents.

AND

In the matter of :

Written Statement on behalf
of the Respondents.

I, Shri I.Pangernungsang, Sr.Supt. of Post
Offices, Guwahati Dn., Guwahati do hereby solemnly
affirm and declare as follows :-

1. That a copy of application alongwith an
order passed by this Hon'ble Tribunal have been served
upon the Respondents and myself being Respondent No. 4
and also being authorised by other respondents, I do
hereby file this Written Statement on behalf of all
the respondents and say categorically that save and accept
what.....

Received by
22/4/96

what is specifically admitted in this Written statement, rest may be treated as total denial by all the Respondents. Before I go for para-wise comments of the application, a brief history of the case is incorporated which will constitute part and parcel of this written statement.

Brief History of the Case

There is a post of EDDA (Extra Departmental Delivery Agent) of Kamakhya Sub Post Office. The regular incumbent one Shri Bipin Ch. Mahanta availed leave for a period of 90 days from 24.8.94 to ~~30~~²¹.11.94. The applicant Smt. Anima Kalita was nominated as the substitute by said Shri Mahanta to work as EDDA at his own responsibility in terms of instruction ^{2 and} 4 of Director Generals instruction inserted below Rule 5 of ED Agents (Conduct and Service) Rules, 1964.

On expiry of leave said Shri Mahanta did not resume his duty. The appointing authority (ASP/Guwahati West Sub Dn.) issued an order on 9.12.94 to officiate the substitute i.e. the applicant as EDDA till the original incumbent resume duty or any action is taken as deem fit.

That arrangement made on 9.12.94 was ordered to be terminated by the appointing authority on 27.11.95 and started disciplinary action against the original incumbent Shri Bipin Ch. Mahanta. Also action taken to appoint one new EDDA on provisional basis observing the required formalities. Accordingly Shri Harapati Patowary has been selected.....

18/11-24.8.94
21.11.94
no break - 21.11.94
22/11
9.12.94
27.11.95
Continued till 24.11.95
OTA

selected as EDDA Kamakhya on 29.02.96 amongst the 4(four) candidates sponsored by the Employment Exchange, Guwahati. The applicant was not appointed as regular EDDA.

As the candidate?

2. That with regard to the contents made in paragraph 1 of the application, I beg to state that the applicant was neither appointed as departmental nor as ED Agent in the Department of Post. She has got no right to challenge the termination order of officiating arrangement made at Kamakhya P.O. by the Asstt. Supdt. of Post Offices, Guwahati(West) Sub Division dated 27.11.95 as well as the selection of one new EDDA(Extra Departmental Delivery Agent) for Kamakhya Post Office vide his memo No.A-1/Kamakhya dated 29.2.96.

3. That with regards to the contents made in paragraphs 2, 3, 4.1 and 4.2 of the application, I beg to state that I have nothing to comment.

4. That with regard to the contents made in paragraph 4.3 of the application, I beg to state that the applicant was not appointed as EDDA(Extra Departmental Delivery Agent) as claimed by her. She was simply allowed to work as EDDA vide memo No.A-1/Kamakhya dated 9.12.94. The order was conditional and purely temporary. She was engaged for 'pending further action as deemed fit' against the original incumbent of the post of one Shri Bipin Chj. Mahanta.

Contd.....

5. That with regard to the contents made in paragraph 4.4. of the application, I beg to state that the applicant was accepted as the substitute of the original incumbent Shri Bipin Ch. Mahanta, EDDA Kamakhya at his own responsibility for a period from 24.8.94 to 21.11.94 under terms and instruction inserted below Rule - 5 of ED Agents (Conducts and Service) Rules, 1964 at the responsibility of said Shri Bipin Ch. Mahanta. The rule itself is clear and concise and substitute has got no right to claim for regular absorption in the Department. The applicant was allowed to officiate as the EDDA Kamakhya P.O. under memo No. A-1/Kamakhya dated 09.12.94 till the original incumbent returns to or the authority takes action as deem fit. Thus the said order dated 9.12.94 does not confer upon her any right to claim for regular appointment in the post of the Department.

6. That with regard to the contents made in paragraph 4.5 of the application, I beg to state that the memo of the appointing authority viz. ASPOs Guwahati (West) Sub Division dated 27.11.95 has been issued as per condition laid down in memo dated 9.12.94. The appointment of Shri Harapati Patowary under memo number A-1/Kamakhya dated 29.2.96 offering him the provisional appointment as EDDA Kamakha is under the perview of the sub-rule 12(iii) of Rule 6 of the ED Agent (Conduct and Service) Rule 1964.

Contd.....

7. That with regard to the contents made in paragraph 4.6 of the application, I beg to state that the employment exchange was requested to sponsor candidates to fill up the vacancy for the post of EDDA Kamakhya endorsing a copy of notice to the Sub Postmaster Kamakhya for wide publicity through office notice board by the ASP(West) Guwahati Sub Division under number A1-Kamakhya dated 12.12.95. The required qualification was sought for as per Departmental Rule (Rule-2 of ED Agent conduct and service Rule 1964) to be class-VIII (eight) passed with preference to HSLC Exam passed candidates. The employment exchange sponsored 4(four) candidates. The name of the applicant was not sponsored by the Employment Exchange to consider her case.

8. That with regard to the contents made in paragraph 4.7 of the application, I beg to state that the respondent number 6 has been selected for provisional appointment as he was found befitting amongst the candidates sponsored by the Employment Exchange observing the required formalities under the rules and procedures of the Department. The applicant was not appointed under any rule that cover the ED Agents. She has got no right to claim for regular appointment as because she was not appointed provisionally earlier as per rule 12(iii) of Rule 6 of ED Agents (Conduct and Service) Rules, 1964.

9. That with regard to the contents made in paragraph 4.8 of the application, I beg to state that the appointing authority did not engaged the said applicant.....

applicant in any Post of higher responsibilities as mentioned by her. Also she was not given any assurance or any undertaking by the appointing authority to appoint her on regular basis. The appointing authority had taken the right decision to terminate the temporary arrangement under memo number A-1/Kamakhya dated 27.11.95.

10. That with regard to the contents made in paragraph 4.9 of the application I beg to state that the selection of Shri Harapati Patowary (Respondent No.6) for appointment as EDDA Kamakhya on provisional basis is a legal one and it is valid. He cannot be an outsider one as his name was sponsored by the Employment Exchange vide order No.ORD-360/95/96 dated 9.1.96. The name of the applicant was not sponsored by the Employment Exchange due to which her case could not be considered.

11. That with regard to the contents made in paragraph 4.10 of the application, I beg to state that the applicant was not appointed as the EDDA in the Department of Post either provisionally or on regular basis. So she cannot claim for making her regular employee. As such, it is not covered by the judgement of the full bench as pointed out by the applicant.

The order of ASPOs Guwahati (West) Sub Division dated 27.11.95 terminating arrangement made under memo dated 9.12.94 is specific and valid. No rule of ED Agents (Conduct and Service) rules 1964 warrants to issue show cause notice to the applicant as because she was not appointed under the provision of said rules.

Contd.....

12. That with regard to the contents made in paragraph 4.11 of the application, I beg to state that the applicant is not the incumbent of the post of EDDA Kamakhya appointed provisionally or on regular basis. It is the appointing authority than can take a decision to make a provisional appointment when it feels necessary. The applicant has no right to challenge the appointment made under memo dated 29.2.96 as she was neither appointed to the said post previously nor her name was sponsored by the Employment Exchange.

13. That with regard to the contents made in paragraphs 4.12 and 4.13 of the application, I beg to state that I have nothing to comment.

now strip?

14. That with regard to the contents made in paragraph 5 of the application, I beg to state that the applicant was not selected and appointed by the appointing authority to the post of EDDA Kamakhya. Therefore her claims are not at all genuine.

15. That with regard to the contents made in paragraphs 6 and 7 of the application, I beg to state that I have nothing to comment.

16. That with regard to the contents made in paragraph 8 of the application, I beg to state that the ED Agents(Conduct and Service) Rules, 1964/^{do not} confer any right to the applicant to challenge the order of the appointing authority.....

authority issued on 27.11.95 and 29.2.96 as she is not an EDDA appointed provisionally or on regular basis.

17. That with regard to the contents made in paragraph 9 of the application, I beg to state that no relief is permissible to the applicant as because her services is not covered by the provisions of the ED Agents(Conduct and Service) Rules, 1964.

18. That the present application is ill-conceived of facts and mis-conceived of law.

19. That the present application is without any merit and as such liable to be rejected.

20. That the present application is not at all maintainable solely on the ground that the applicant has not exhausted all the remedies available to her.

21. That there is no any cause of action, the application is liable to be rejected outright.

22. That the Respondents crave leave of this Hon'ble Tribunal for filing additional written statement if so directs.

23. That the interim order directing the respondents to allow the applicant to continue in service is putting the respondents in great administrative dead-lock and as such same is liable to be vacated.

24. That this Written Statement is filed bonafide and in the interest of justice..

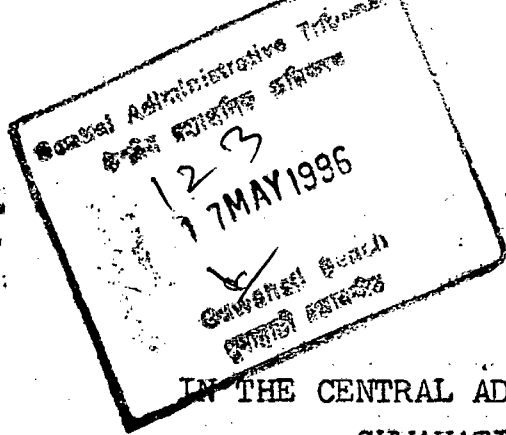
Verification.....

d

VERIFICATION

I, Shri I. Pangernungsang, Sr. Superintendent of Post Offices, Guwahati Division, Guwahati do hereby solemnly affirm and declare that the contents made in paragraph 1 of this Written Statement are true to my knowledge and those made from paragraphs 2 to 17 including the brief history of the case incorporated herein with this Written Statement are derived from records which I believe to be true and rest are humble submissions before this Hon'ble Tribunal. AND I sign this Verification on this 19th day of April, 1996 at Guwahati.

~~Deponent.~~
 ৱাৰ্শ্বিক সৰ্বমুখী প্ৰশাসক
 Sr. Superintendent of Post Offices
 গুৱাহাটী মণ্ডল, গুৱাহাটী—781001
 Guwahati Division, Guwahati—781001



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

Filed - Sri Harapati Patowary,
Sri Harapati Patowary,
Through M. Deba, Advokat.
16.05.96

In the matter of.

O.A. No 40 of 1996.

Smti Anima Kalita Applicant.

Vs.

Union of India and
others. Respondents.

AND

In the matter of.

Written Statements on behalf of
the Respondent no 6.

I, Sri Harapati Patowary son of Sri
Bhabenswar Patowary, respondent no 6
in the above case do hereby solemnly
affirm and declare as follows :-

1. That a copy of the application alongwith
an order passed by the Hon'ble Tribunal on
13.3.96 have been served upon me as respondent
no 6 in the above case.

2. That I am a citizen of India residing at Fatashil Ambari Guwahati. Being an unemployed youth I registered my name in the District Employment Exchange, hereinafter as DEE, Guwahati in the year 1991. My registration no is 1205/91.

3. BRIEF HISTROY OF THE CASE.

A vacancy of EDDA (Extra Departmental Delivery Agent) occurred in the Kamakhya Sub Post Office. The Postal Authority notified that vacancy to the DEE Guwahati for submission of suitable candidates. The DEE Guwahati submitted a list of 4 candidates including the name of the respondent No 6 to the employer. The Postal Authority held interview of the candidates and selected respondent no 6 and offer him appointment against the post at Kamakhya Sub-Post Office. The respondent no 6 accepted the appointment and inform the authority on 12.3.96 and went to the Kamakhya Sub Post Office to join his duties.

The Asstt. Post Master of Kamakhya Sub-Post Office advised the respondent to come on 15.3.96. When he reported on 15.3.96 he was again asked to report the next day and when next day the respondent reported he advised to come on 18.3.96. When the respondent reported on 18.3.96 he was not allowed to join. The respondent reported the matter to the Asstt. Supdt. of Post Offices, Guwahati.

4. That with regard to the contents in paragraphs 2, 3, 4.1, and 4.2 of the application the respondent begs to state that he has nothing to comment.
5. That with regard to the contents in paragraph 4.3 of the application the respondent begs to state that the vacancy of EDDA occurred when the regular incumbent Sri Bipin Chandra Mahanta availed leave for 90 days from 24.8.94 to 21.11.94. Before proceeding on leave Sri Mahanta arranged Smti Anima Kalita as his substitute to work for the days of his absence. When Sri Mahanta did not turn up from his leave the authority terminated the substitute appointment and notified the vacancy to the DEE Guwahati to regularly appoint a person.
6. That with regard to the statements in ~~px~~ paragraph 4.4 of the application the respondent begs to state that as per contents in paragraph 5 of the written statements of the Sr. Supdt of Post Offices, Guwahati the applicant was working as a substitute only and as such she has no right to claim regular appointment in the post.
7. That with regard to contents in paragraph 4.5 of the application the respondent/^{no 6}informed the Postal Authority his acceptance the appointment

as EDDA at Kamakhya Sub Post Office and reported to the Asstt. Post Master for his joining but the said Post Master prevented him to join his post.

8. That with regard to the statements in paragraph 4.6 the respondent no 6 begs to state that the Postal Authority notified the vacancy to the DEE Guwahati as per provision of the ~~Compulsory Notification of Vacancy Act~~ Employment Exchanges (Compulsory Notification of Vacancy) Act 1959 and ~~smt~~ sent a copy of notification to the Kamakhya Post Office for wide publicity, through office notice Board. The Employment Exchange recommended 4 candidates. The name of the applicant was not there.

9. That with regard to the contents in para 4.7 of the application the respondent no 6 begs to state that the Postal Authority in their Written Statements in paragraph 8 clarified that the applicant was not appointed provisionally earlier as per rule 12 (iii) of Rule 6 of ED Agent Rule 1964.

10. That as regards the contents in paragraph 4.8 of the application the respondent no 6 has nothing to comment. In the Written Statement filed by the Postal Authority it was stated in para 9 that the applicant was not engaged in any post with higher responsibility.

11. That with regard to the contents in paragraph 4.9 of the application the respondent no 6 begs to state that he is not an outsider. He is a local Assamese candidate having registration at D.E.E. Guwahati.

12. That with regard to the contents in paragraph 4.10 of the application the respondent no 6 begs to state that he has nothing to comment upon it.

13. That with regard to the contents in paragraph 4.11 the respondent no 6 has nothing to comment in view of the comments stated by the Postal Authority in para 12 of their W.S.

14. That with regard to the contents in paragraphs 4.12 and 4.13 the respondent no 6 has nothing to comment.

15. That the vacancy of class IV categories in a Central Govt, Establishment is required to be filled through the Employment Exchanges compulsorily and any deviation from this established rule is violation of Rule of Law and against the Administrative Jurisprudence.

16. That with regard to the contents in para 5.3 the respondent no 6 beg to state that the Postal Department is not an industry under the Industrial Dispute Act.

17. That the responded no 6 was selected in a due process of law following all rules and procedure adopted by the Central Government establishments.

18. That the respondent no 6 is a local unemployed youth waiting in the register of the Employment Exchange since 1991 for a job, and for the placement in the present job his name has been struck out from the roll of the Employment Exchange. If the respondent is deprived of his present employment he shall have no further chance of getting ^{any employment} and shall suffer frustration in his whole career.

19. That the respondent craves the leave of the Hon'ble Tribunal to advance more grounds at the time of hearing.

20. That this Written Statements are made bonafide and for interest of justice.

In the premises aforesaid, it is prayed that the Hon'ble Tribunal would be pleased to call for records and hearing parties would be pleased to vacate the interm order and allow the respondent to join his post and/or pass such other order/orders as the Hon'ble Tribunal would deem fit and proper.

VERIFICATION.

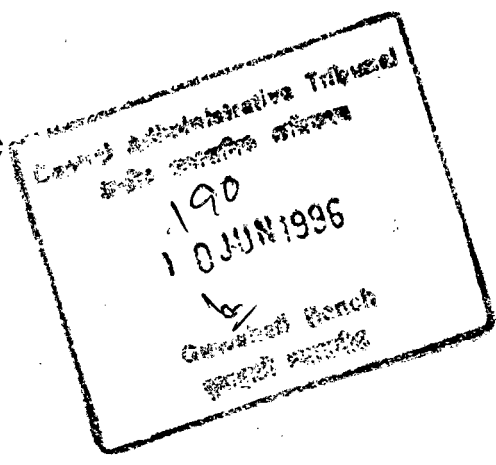
V E R I F I C A T I O N .

I, Sri Harapati Patowary son of Sri Bhabaneswar Patowary, resident of Fatashil Ambari, Guwahati do hereby solemnly affirm and verify that the contents in paras 1 to 20 are true to my personal knowledge and belief and that I have not suppressed any material fact.

Dated Guwahati.

the 16th May 1996.

Sri Harapati Patowary.
Signature of the Respondent
No.6



*Filed by the advocate
Siddhanta Sarma
Strait
6.6.96.*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.
GUWAHATI BENCH.

IN THE MATTER OF :

O.A. No. 40 of 1996.

Smt. Anima Kalita ... Applicant.

Vs.

Union of India & Ors.... Respondents.

AND

IN THE MATTER OF :

Rejoinder to the written statement
filed by the official respondents.

The applicant beg to state as follows :-

1. That the applicant has gone through the copy of the written statement filed by the respondents in the above-noted case and has understood the contents thereof. Save and except the statements which are specifically admitted here-in-below, other statements made in the written statement are categorically denied. Further, the statements which are not born on records are also denied by the applicant.

2. That with regard to the statements made in paragraph 1 under the heading "Brief history of the case", the applicant begs to state as follows :-

*Recd
Gokul Narayan
Asst. Commr
CA 7
Guwahati
6/6/96.*

Ctd.....2

The applicant has been working as EDDA in place of one Shri Bipin Ch. Mohanta. Her such appointment of nomination was approved by the competent authority - the Asstt. Supdt. of Post Offices, Guwahati, West Sub Division. Prior to that the applicant was working as a part time employee of the said Post Offices. Both as part time employee as well as EDDA, the applicant is entitled to certain privileges which the respondents cannot deny. Since the earlier incumbent Shri Bipin Ch. Mohanta did not come back to his service, the applicant was permitted to work as such by an order of the appointing authority in full consideration of her having fulfilled the required standard for the post and the applicant has been working as such till date. As already stated above, prior to that the applicant was a part time employee of Kamakhya Post Office and she has been continuing as EDDA till date without any any interruption. Thus, the application filed by the applicant for her regular absorption is maintainable.

As per departmental rules and procedure, a part time employee of the Office should be given preference to officiate against the resultant vacancy of the post of EDDA with priority to regular absorption in the post. The applicant fulfils all the criterias for regular absorption including the criteria for educational qualifications and employment exchange registration. The educational qualifications for the post of a EDDA is Class VIII passed which the applicant fulfils having read upto Class X.

Ctd....3

3. That with regard to the statements made in paragraph 2 of the written statement, the applicant begs to state that the termination of her provisional assignment as EDDA and further provisional appointment of the private respondents in her place is illegal and hence, the same has been challenged before this Hon'ble Tribunal. Such illegal action on the part of the respondent is motivated which has resulted in denial of justice to the applicant. The applicant has read upto Class X and her name is registered with the employment exchange situated at Rajghat Road, Guwahati, which deals with registrations of candidate below matriculation standard. The appointing authority with deliberate intention called for sponsorship of matriculate candidate from the Bharalumukh Employment Exchange with request to sponsor the names of matriculate candidates (preferably against the post where Class VIII is required). Alternatively it was suggested that matriculate candidate should be preferred where no under-matric candidate is available. The Bharalumukh Employment Exchange being an Exchange dealing with matriculate candidate and upward only, naturally was not in a position to sponsor names of Class VIII standard candidates. The respondents ought to have sent the requisition to the Rajghat Road Employment Exchange Office instead of Bharalumukh Employment Exchange. This was done deliberately by the respondents and the plea now they have taken is altogether unsustainable.

4. That with regard to the statements made in paragraphs 3 and 4 of the ~~written~~ written statement, while

denying the contentions raised therein the applicant begs to reiterate and reaffirm the statements made here-in-above.

5. That with regard to the statements made in paragraphs 5 and 6 of the written statements, while denying the contentions raised therein- the applicant begs to state that she is entitled to the benefits of rules and circulars holding the field and the respondents cannot deny the said benefit to her. There was no occasion for the respondents to offer provisional appointment to the private respondents when the applicant is very much available.

6. That with regard to the statements made in paragraph 7, 8 and 9 of the written statement, the applicant denies the contentions made therein and reiterates and reaffirms the statements made here-in-above. Under no circumstances, the respondents can substitute the services of the applicant by any provisional arrangement without considering her case for regularisation under the rules and circulars holding the field. The applicant craves leave of this Hon'ble Tribunal to rely upon the rules and circulars holding the field at the time of hearing of the instant case.

7. That with regard to the statements made in paragraph 10 of the written statement, the applicant stated that the respondents instead of being a model employer cannot adopt the hire and fire policy. The contention that

the name of the applicant was not sponsored by the employment exchange is ridiculous in-as-much-as firstly no effort was made to get her name sponsored through employment exchange and secondly, even without such sponsorship she is required to be considered for regular absorption against the post. The respondents by appointing the private respondents have acted malafide and in colourable exercise of power.

8. That with regard to the statements made in paragraph 11 to 24 of the written statement, while denying the contentions made there, the applicant beg to reiterate and reaffirm the statements made here-in-above. No case has been made out by the respondents for vacating the interim order. The so called great administrative dead-lock is as vague as anything in-as-much-as the applicant has been serving to the fullest satisfaction of all concerned. If the stay order is vacated, she will suffer irreparable loss and injury and it will lead to to her starvation along with her two minor children. It will be pertinent to mention here that as a measure of punishment, the respondent have not released her salary for which appropriate direction may be issued to them for releasing the salary and continue to pay her salary at her regular intervals as per her admissibility.

Ctd.....6

- 6 -

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

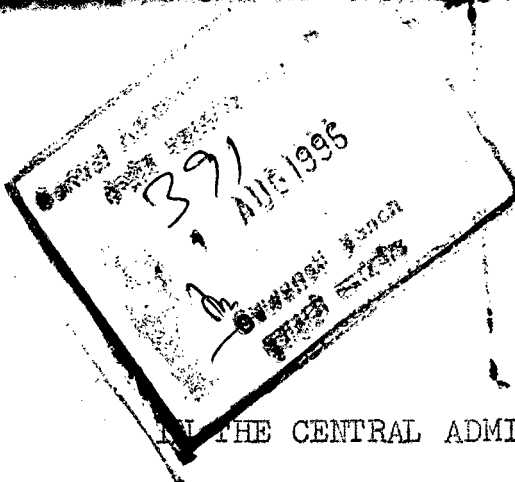
I, Smt. Anima Kalita, the applicant in O.A. No. 40/96, do hereby solemnly affirm and state that the statements made in paragraph 1 are true to my knowledge, those made in paragraphs 2 to 8 are true to my information derived from the records of the case and the rests are my humble submission before this Hon'ble Tribunal.

And I sign this Verification on this 6/5 day of June, 1996.

Soni Anima Kalita

(Signature of the applicant).

...



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Filed by
Golap Sarma
Additional Counsel
Smt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench
31.7.96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

In the matter of :

O.A.No.40/96

Smt. Anima Kalita ... Applicant.

-Versus-

Union of India & Ors. ... Respondents.

-AND-

In the matter of :

Reply to the rejoinder filed
by the applicant on behalf of
the official respondents.

I, Shri S. Rangarajasingh

Sr. Superintendent of Post Offices, Guwahati Division
Guwahati-781001 do hereby solemnly affirm and declare
as follows :-

1. That a copy of rejoinder filed by the
applicant in the above noted case has been served
upon me through my counsel and I have gone through
the contents of the said rejoinder and fully understood
the

the contents thereof. I feel necessary to make a reply to the rejoinder and as such reply is made which will be a common reply on behalf of all the official respondents.

2. That with regard to the contents made in paragraph 1 of the rejoinder, I beg to state that no statement has been made by me being respondent No.4 and also being authorised by other respondents filed in connection with the above case which are not born on records. All the statements have been made based on record.

3. That with regard to the contents made in paragraph 2 of the rejoinder, respondents beg to state that in the brief history of the case incorporated in the written statement, it was clearly stated that the applicant was accepted as a substitute of the regular incumbent Shri Bipin Ch. Mahanta, EDDA, Kamakhya P.O. for a specific period of 90 days from 24.08.94 to 21.11.94 under the purview of terms and instructions 2(two) ✓ and 4(four) of DG's instruction inserted below Rule 5 EDA (Conduct & Service) Rules, 1964.

The order of ASPOs, Guwahati West Sub Divn. dated 9-12-94 permitting the applicant to officiate as EDDA, Kamakhya P.O. was a conditional one i.e. the applicant will continue to officiate as EDDA till the regular incumbent resumes his duty or the appointing authority take any action as deem fit. Thus the order of

ASP(W).....

ASP(W) dated 09-12-94 was specific and concise. There is no provision in the EDA(Conduct & Service) Rules 1964, which entitles any person who works as substitute of any EDA of officiate in any post to make him/her regular appointment in the said post.

4. That with regard to the contents made in paragraph 3 of the rejoinder, respondents beg to state that observance of prescribed rules and procedure can not be an illegal action. It is the duty of the appointing authority to stop continuance of officiating arrangement for longer period to avoid any anomaly that may arise in future. And for this reason the order permitting to continue to officiate the applicant dated 09-12-94 was ordered to be terminated by the ASP(W) Sub Division under memo No.A1/Kamakhya dated 27.11.95. The appointment of private respondent i.e. Respondent No.6 was made in exercise of powers conferred under sub rule 12(iii) of Rule 6. By this act of appointment of the private respondent, no injustice was done in the appointment. The prescribed qualification for the EDDA is class-VIII standard with a preference to Matriculate or equivalent (Rule 2 of EDA (Conduct & Service) Rules 1964). Accordingly the Asstt. Director of Employment Exchange, Bharalumukh as well as the Employment Officer for unskilled candidates at Pub Sarania, Guwahati-3 were requested to sponsore candidates for the post for making.....

making provisional appointment by the ASP(W) Sub Division under letter No.A1/Kamakhya dated 12.12.95. As many as four candidates including the Respondent No.6 were sponsored by the Asstt. Director, Employment Exchange, Bharalumukh vide letter No.ORD-3600/95-96 dated 09.01.96 while no candidate was sponsored by the other Exchange even after expiry of the time scheduled for it. Accordingly, respondent No.6 was selected for appointment as he was found befitting. The allegation of the applicant that "the appointing authority with deliberate intention called for sponsoring of matriculate candidate from Bharalumukh Employment Exchange against the post where class-VIII is required" is baseless. It is a condition of qualification that matriculate or equivalent may be preferred while appointing EDDA. Naturally request should be made to both the Employment Exchanges so as to get the suitable candidates. The applicant has brought the plea without showing the actual position.

5. That with regard to the contents made in paragraph 4 of the rejoinder, respondents beg to state that the statements made in para 3 and 4 of the Written statement submitted by the respondents is re-affirmed as made therein.

6. That with regard to the contents made in paragraph 5 of the rejoinder, respondents beg to state that.....

that the statements made in para 5 and 6 of the Written Statement submitted on behalf of the official respondents are hereby re-affirmed the contents as made therein.

7. That with regard to the contents made in paragraph 6 of the rejoinder, respondents beg to re-affirm the statements made in paras 7, 8 and 9 of the Written Statement filed by the official respondents in the present OA No.40/96.

8. That with regard to the contents made in paragraph 7 of the rejoinder, I beg to re-iterate the contents made in paragraph 10 of the Written Statement. There is no hard and fast rule that one person holding the charge of any post in officiating capacity must be made regular. Alternatively no regular appointment has been made to the post of EDDA, Kamakhya P.O. There is difference in provisional appointment and regular appointment.

9. That with regard to the contents made in paragraph 8 of the rejoinder, respondents beg to state the contents made in paragraph 11 to 24 of the Written statement are re-affirmed. The interim order of this Hon'ble Tribunal directing the respondents to allow
the.....

the applicant to continue in service is putting the official respondents in great difficulty and as such is liable to be vacated in view of the statements made in the written statement as well as this present reply to the rejoinder. At the same time the respondents like to inform the Hon'ble Tribunal that proper action has been taken to release the duty allowance of the applicant.

10. That the present rejoinder submitted by the applicant is uncalled for, as it failed to disclose any new cause of action at all.

11. That the said rejoinder is only a replica of the original application.

12. That the reply of the rejoinder is filed bonafide and in the interest of justice.

VERIFICATION

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X

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

I, Shri *D. Langensungang*
Senior Superintendent of Post Offices, Guwahati
Division, Guwahati do hereby solemnly affirm and
declare that the contents made in paragraph 1 of
this reply to the rejoinder are true to my knowledge
and those made from paragraph 2 to 9 are derived
from records which I believe to be true and those
made in paragraph 10, 11 and 12 are humble submissions
before this Hon'ble Tribunal.

AND I sign this VERIFICATION on this 25th day
of *July*, 1996 at Guwahati.

~~DEPONEE~~
~~সিই মন্তব্যে স্বাক্ষর~~
Sr Superintendent of Post Offices,
গুৱাহাটী মণ্ডল, গুৱাহাটী—781001;
Guwahati Division, Guwahati—781001.