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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 2504/2001

NEW DELHI THIS. 20. THE DAY OF AUGUST 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Sunil Kumar Sharma,
S/O Sh. Mahinder Singh Sharma
H No. 208/Pocket D-II Sector 7,
Rohini, Delhi - 110085

.....Applicant

(By Sh. Yogesh Sharma, Advocate)

VERSUS

1. Union of India through
the Director, Dept. of Posts,
Dak Tar Bhawan, New Delhi
- 2- The Chief Post Master General,
Delhi Circle, New Delhi
3. The Sr. Supdt of Post Office,
Delhi North Division, Civil Lines,
Delhi
4. The Asstt. Supdt. of Post Office,
Delhi North Ist Sub Division,
Ashok Vihar, HPO, Delhi - 110082

.....Respondents

(By Sh. R V Simha, Advocate)

O R D E R

BY SH. GOVINDAN S. TAMPI, HON'BLE MEMBER (A)

This OA has been filed challenging the order dated 27.1.2001, terminating the services of the applicant and seeking his reinstatement and / or placing him in the wait list for future consideration.

2. S/Shri Yogesh Sharma and R V Simha, represented the applicant and the respondents respectively during the hearing.

3. Sh Sunil Kr. Sharma, applicant was provisionally engaged as Extra Depp. Agent on 10.10.97, under the respondents. He also functioned as ED Stamp Vendor. Following his representation dated 23.12.2000 for regularisation, his services were abruptly dispensed with, though work was available. Besides two other persons, S/Shri Gursharan and Ram Diya were engaged

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for the same work as he was performing. Those provisionally engaged and subsequently disengaged were to be kept on the wait list, if they had worked for three years, in terms of respondents directions in 43-4-/77-Pers dated 23.7.79, but the same has not been done and he has illegally been replaced by freshers and juniors. Hence this O.A.

4. Grounds raised in this OA are that:

- i) the applicant's services have been dispensed with though he was originally engaged against a regular vacancy and he had worked for three years;
- ii) those who had worked for 240 days and are willing to work as ED vacancies should be given preference in re-engaged; as per DGPT's letter dated 6.6.88;
- iii) the applicant was entitled for alternative employment;
- iv) even old EDBPM, not recruited on regular basis is entitled for weightage;
- v) one ad hoc appointment cannot be replaced by another ad hoc and therefore engagement of freshers was illegal.

5. All the above points were reiterated by Shri Hagesh Sharma, who also relied upon the decision of the single Bench of the Tribunal in OA 1280/99, filed by Hari Om and decided on 17.2.2000. He therefore prayed that OA be allowed and that reliefs sought be granted.

6. Respondents point out in their pleadings, reiterated by Sh. R U Sinha, learned counsel that the applicant had been originally engaged from 10.10.97 to 20.7.98 as EDDA and thereafter as ED Speed Delivery Agent till 31.5.2001 and 27.1.2001. All those were provisional arrangements on stop gap basis. He had worked when the regular EDDA was put off duty. In fact the arrangement was over on 22.12.2000 and the job was held for the period thereafter upto 27.1.2001, was held by him without sanction from the Competent Authority. The applicant's plea that two freshers/ juniors were engaged at his cost was incorrect. He had not worked beyond three years, as the period beyond 22.12.2000 was unauthorised. Even earlier he had only worked in broken spells and such broken spells did not make the applicant eligible for regularisation.

Shri Sinha also refers to the decisions of the Larger Bench of the Tribunal, given on 19/20.4.2000, at Bangalore, while disposing OA No. 100, 101, 111, 112 of 1999 and states that the same is squarely applicable in this case. OA therefore deserves to be dismissed, pleads he.

7. In reply Sh. Yogesh Sharma, points out that the decision of the Tribunal, referred by the respondents did not at all cover the issue in this case and it deserved to be decided on its facts, which were favourable to the applicant.

8. I have carefully deliberated on the rival contentions raised in this OA. The applicant, an individual who had worked as a DODA & ED speed Post Agent from 1997, on provisional basis is aggrieved that his services have been discharged, he has not been regularised and that his name has not been kept in the wait list, as he had rendered three years service. On the other hand, respondents hold that the applicant had been in service only in broken spells, his service beyond 22.10.2000 was unauthorised and that he cannot seek regularisation, weightage etc. It is true that the applicant had worked with the respondents since 10.10.97 for nearly three years, but only in broken spells and as a substitute. He cannot get the benefit of regularisation. Further as he was not a casual worker, the schemes of regularisation of DOPT's or P & T would not apply to him and even if he was a Casual Labourer, he was not in position, when the schemes were formulated, as settled by the Hon'ble Apex Court in in Haryana Electricity Boards and Mohan Pal's cases (2002 (4)) SCALE 216 as far as grant of regularisation of provisionally appointed ED Agents, I find that the issue had been settled by the Larger Bench of the Tribunal, at Bangalore on 19/20.4.2000, while

disposing of OA No. 100/99 filed by Das, Nagash and a host of other OAs filed by EDDA, the decision of the Five Member Bench of the Tribunal. Relevant portion of the said decision reads as below:

" In our judgement, the aforesaid decision has misconstrued the instructions contained in the aforesaid letter of 6.6.1988 and has extended its application to the case of a provisionally appointed ED agent whereas the aforesaid instructions pertain only for granting preference to casual labourers who are required to be absorbed as group B & D under the scheme formulated for that purpose. The Tribunal in the above case had done precisely what has been done by it in the case of Government of Andhra Pradesh and another Vs P. Ravindra and another supra. The Tribunal in that case had extended the benefit provided in the Government Notification for those who had answered the written examination held by Public Service Commission, in Telugu, to all other examinations which was found fault with by the Supreme Court. The Tribunal in the instant case has also extended the benefits which are conferred on casual labourers to candidate who had been appointed provisionally or by way of stop gap arrangement as ED Agent. The same, in view of the ration laid in the aforesaid decision cannot be sustained. The candidates appointed as casual labourers and to whom the scheme of regularisation is applicable are entirely distinct from the candidates who are appointed as ED Agents on ad hoc or provisional basis or by way of a stop gap arrangement. The benefit conferred on casual labourers therefore, cannot be extended in favour of the applicants who have been appointed on provisional basis and ad hoc basis. The aforesaid decision of the Division Bench in the case of Nagaraju which takes a view contrary to the view taken by us is, in the circumstances, overruled.

36. For the foregoing reasons issue No. 2 is answered in the negative."

The point of law having been settled on the identical matter by the Larger Bench, I have to abide by the same, as matter of judicial discipline. The applicant's case being similar to those concerned in the decision referred above, his case for regularisation, re-engagement has to fail.

9. In the result the OA fails and is accordingly dismissed. No costs.

(Govindan S. Tampi)
Member (A)

Patwal/