

printer 1; on
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.292/2001

New Delhi, this the 1st day of March, 2002

Shri Mangal Singh
s/o Shri Bir Singh
r/o Karawal Nagar Delhi-94,
address for service of notices
c/o Shri Sant Lal
Advocate
C-21(B) New Multan Nagar
Delhi - 110 056.

... Applicant

(By Advocate: Shri Sant Lal)

Vs.

1. The Union of India through
the Secretary
Ministry of Communications
Dept. of Posts
Dak Bhawan
New Delhi - 110 001.
2. The Sr. Supt. of Post Offices
Delhi North Postal Division
Civil Lines
Delhi - 110 054.
3. The Asstt. Supdt. of Post Offices
Delhi North Ist. Sub Division
Ashok Vihar
Delhi - 110 052.

.... Respondents

(By Advocate: Shri R.N.Singh)

O R D E R

By Shanker Raju, Member (J):

Applicant, who is working as E.D.Agent, has assailed his oral termination and has sought regularisation/absorption as EDDA against a vacant post with all consequential benefits.

2. The facts of the case leading to the present controversy are that applicant, having been sponsored through Employment Exchange, the Assistant Superintendent of Post Offices (ASPO) has called upon the applicant to produce his relevant certificates.

8 Applicant was selected as EDDA and after been declared medically fit, and completion of other formalities by letter dated 24.7.1998 appointed as EDDA, Ashok Vihar, HO against the vacancy of one Shri Ashwani Kumar, EDDA. The aforesaid appointment was provisional and no period has been mentioned but it is incorporated in the letter that the appointment is in force till the regular appointment is made. Subsequently, the applicant shifted to Subji Mandi Post Office, and worked till 16.6.2000 with few technical breaks. Applicant submitted representation on which nothing had been communicated to him. (14)

3. During the course of the hearing, by an order dated 5.10.2001, the respondents have been directed to file a detailed affidavit regarding placing on record the relevant material to indicate the communication of authorisation of regular incumbent, Shri Ashwani Kumar and others to the applicant to work as his substitute at various post offices. In view of the contention of the applicant that he has been regularly appointed to the post after being subjected to due process of selection and by verbal orders he has been shifted to another Post Office which amounts the transfer of regular employee.

4. Learned counsel for the applicant, contended that termination of the applicant is in violation of Rule 6 of the E.D. Agents (Conduct and Service) Rules, 1964 (hereinafter called as "EDA Rules"). Rule 6, wherein it is provided that the termination is to be resorted by notice in writing of one month as the respondents have violated the laid

down procedure despite in the appointment letter his services are to be governed by these rules, the action of the respondents is in violation of Articles 14 and 16 of the Constitution of India.. The applicant has not been served upon a show-cause notice prior to his termination which is contrary to the principles of natural justice. It is further contended that the applicant had worked continuously with notional breaks from 27.7.1998 to 16.6.2000 and the appointment was shown as provisional but yet in fact, it is a regular appointment and after following the due process of selection and completion of pre appointment formalities. Applicant was sponsored through Employment Exchange and the services rendered should be deemed to be treated as continuous. It is also stated that having failed to produce the record, as the substitute is engaged by a regular incumbent, despite writing to the respondents, and having failed to produce the relevant record to that effect, an adverse inference should be drawn against the respondents. Appointment of the applicant should have been treated as continuous being against a reserved category.

5. The learned counsel for the applicant has further stated that once an employee is selected and empanelled for appointment, he gets a status and his right to be determined in accordance with rules and procedure laid down. For this, the learned counsel for the applicant places reliance on the rulings of Apex Court in Roshan Lal Tandon Vs. Union of India, AIR 1967 SC 1889, Sonj Khup Chunj Serto & Others Vs. The State of Manipur & Others, III 1991(3) CSJ (HC)

436 (DB) and S.Govinda Raju Vs. Kerala Road Transport, 1986(2) ATR SC 362. He also further placed reliance on the decision of the Co-ordinate Bench in Deepak Gupta Vs. Union of India OA 1380/95, decided on 1.2.1996 by the Principal Bench, wherein it is held that authority administratively higher than the appointing authority has no power of review in the matter of selection and appointment by an appointing authority. It is in this conspectus, contended that the applicant was shifted from Ashok Vihar Post Office to Sabji Mandi under the verbal orders of ASPO and at that time selection of the applicant for appointing as EDDA has been under going the due process of selection. It is also stated that nothing has been shown to point out any specific provisions of which he is alleged to have not been complied with in making the selection.

6. On the other hand, the respondents' counsel strongly rebutting the contentions stated that the applicant was given appointment on a short term arrangement as a substitute EDDA of regular incumbent vice Shri Avnish Kumar and on his return he was shifted and transferred as substitute ED Packer against as substitute of one Shri Rajesh Sharma. As regards recruitment made in the 1998, it is contended that the applicant was selected provisionally as SC candidate and the action of the ASPO to form a panel of appointment against post falling vacant subsequently was not in conformity with the Recruitment Rules for EDDA as published in Section IV of method recruitment in the relevant rules *ibid*. The applicant was given provisional appointment till the

regular incumbent arrangement is made and ASPO has carried out the pre appointment formalities which was irregular as the applicant was not a regular appointment and was only a substitute, he has no right to be appointed on regular basis and on joining of the regular incumbent he was disengaged as Shri Jai Bhagwan joined in his post as EDDA. By referring to the Larger Bench decision of this Court (5 judges) in D.M.Nagesh & Others etc. etc. Vs. The ASPO & Others, ATJ Full Bench Judgements (1997-2001) Page 160, it is contended that weightage of past service would not be the only decisive factor while making regular appointment on EDDA and further it is stated that the applicant having worked as Substitute has no right to seek regularisation. From the Annexures appended to the counter reply it is stated that whenever the applicant was engaged he has been on provisional basis as substitute of a regular incumbent which has been referred to in the communications.

7. In the additional affidavit filed by the respondents on 1.11.2001, it is contended that as the action of ASPO was void, ab-initio, against rules, they reserved their right to take appropriate action against him. Apart from, it is contended that the appointment of the applicant was de-hors the rules which does not bestow any right upon him to seek regularisation or to treat the applicant as regular. Further it is contended that they have tried their best to trace the record. It is also contended that the respondents have admitted that the applicant was selected after completion of pre appointment formalities and nothing has been brought on record to

show that the applicant has been a nominee of regular EDDA or his substitute. By referring to the decision of the Co-ordinate Bench in Ved Ram Vs. Union of India, 1991 (1) CSJ 112, it is contended that in case of non-production of record, an adverse inference should be drawn against the respondents. In absence of any documents submitted by regular incumbent, it is illogical that the competent authority would have issued number of orders of appointment showing the applicant on provisional post, and once he is observed to be Governed by the EDA Rules *ibid*, which are not applicable to substitute, the applicant cannot be treated as substitute.

8. I have carefully considered the rival contentions of the parties and perused the relevant record produced by the respondents. It is not in dispute that the applicant has been sponsored through Employment Exchange and was called upon by the respondents for being appointed as EDDA. It is also not disputed that the applicant has been subjected to pre appointment formalities as laid down in Section IV, i.e., method of recruitment, under the rules. From the perusal of the record, it transpires that the respondents have selected candidates and appointed them according to the merit list and as per the category to which they belong to. Applicant's name has been enlisted at Sl. No.2 of the provisional SC candidate. It is also not dispute that ASPO is the appointing authority of EDDA even on regular basis. The contention of the respondents is that the ASPO action was irregular and in violation of the departmental rules as the applicant was selected

provisionally as SC candidate in the panel subject to adjustment of vacant post is not correct as the rules prescribed that EDDA is to be recruited against a particular post.

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9. In my considered view and from the perusal of the method of recruitment contained under the Rules, I do not find any such provision as contended by the respondents. The claim of the applicant is that having been appointed as EDDA on provisional basis, the applicant has been subjected to all pre appointment formalities and thereafter with few breaks has continued till 27.12.2000 not as substitute but on regular basis and even has been transferred to one Post Office on verbal orders which show that he is a regular incumbent. In accordance with the rules and the procedure laid down, when a substitute is appointed on a short-term basis or till the regular incumbent joins it is the regular EDDA whose substitute has been appointed to nominate the substitute in writing. Although the stand of the respondents by referring to a letter dated 24.7.1998 and other letters whereby the applicant has been shown to be provisionally appointed in place of the regular incumbent, has not been proved by production of the letters which could have established that the applicant was nominated by the regular incumbent and as such was appointed as a substitute. To a specific averment in their affidavit, this has been stated that in spite of best efforts they are unable to trace the records to establish that the applicant was worked as substitute of one Avinash Kumar and Others for various periods. Non production of the material record to

establish that the applicant was appointed as
Substitute despite being accorded reasonable
opportunity, the respondents have failed to establish
that the applicant was appointed as substitute of no
regular incumbents. It is duty of the Government to
justify their action by producing proper pleadings or
by producing the records. Having failed to produce
the relevant record to substantiate their contentions,
an adverse inference is to withdraw against them,
which is in consonance with the decision of the Apex
Court in Vijay Narain Singh Vs. Superintendent of
Police, 1994 (27) ATC 405.

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10. I find that the applicant was subjected
to all pre appointment formalities and had continued
from 24.7.1998 till 16.6.2000, with artificial breaks
and there is nothing on record to suggest that such an
appointment was as substitute, the claim of the
applicant that he was appointed on regular basis and
in accordance with rules and was not a substitute of
regular incumbents as EDDA has not been negated by
respondents by producing the relevant record, is found
to be correct.

11. In the result, the present OA is allowed
to the extent that the respondents are directed to
consider the applicant for regularisation as EDDA
within a period of three months from the date of
receipt of a copy of this order. In that event, he
shall be entitled for all consequential benefits. No
costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/