

Central Administrative Tribunal
Principal Bench

O.A.: 1527/99

• New Delhi this the 17th day of February, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

By Advocate Shri Sant Lal.

Versus

1. The Union of India, through the Secretary, Ministry of Communication, Deptt. of Posts, Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General, Delhi Circle, Meghdoot Bhawan, New Delhi-110001.
3. The Sr. Supdt. of Post Offices, Delhi East Division, Delhi-110051.
4. The Assistant Supdt. of Post Offices, Delhi East Sub-Division, Delhi-110091.

By Advocate Shri D.S. Mahendru

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The applicant is aggrieved by the order terminating his services as Substitute Extra Departmental Agent (EDA) dated 25.6.1999 which has been issued in pursuance of the letter issued by the office of Chief Post Master General, Delhi Circle dated 12/13.5.1999. The applicant has sought the following main reliefs in this O.A:-

"(1) To quash the impugned order dated 25.6.99 including CPMG Delhi Circle Order dated 12/13.5.99 containing direction not to allow arrangement to continue beyond six months mentioned therein;

(2) To direct the respondents to reinstate the applicant as E.D. Employee forthwith:

(3) To direct the respondents to consider regularising the service of the applicant w.e.f. 16.5.94 or any subsequent date from which he had worked as E.D. Employee in Seelampur post office when this post fell vacant on account of promotion of Shri Shyambir Singh Nagar/Devender Kumar the regular incumbents of this post;

(4) To grant all consequential benefits of continuity of service, seniority including back wages and consideration for promotion to Group 'D'/Postman on his turn according to his seniority".

2. The applicant has relied on Annexure A-1 letter which has been issued in December, 1994 in which it has been stated, inter alia, that the 19 EDAs mentioned therein, who have been allowed to work as daily wager Postmen have provided their Substitutes noted against each of them. At Serial No. 19 of this letter, the applicant has been shown in Col.3 as a Substitute for the E.D.A. Shri Devender Kumar, and his date of engagement is shown as 1.12.1994. In Paragraph 4.3 of the reply filed by the respondents, they have submitted that the applicant has been working as Substitute of regular EDA employee at different spells of time and they have shown the details in that paragraph. From this, it is seen that the applicant had worked as Substitute even earlier to 1.12.1994 against one Shri Shyambir Singh, EDA from 18.5.1994 to 10.7.1994 and 18.7.1994 to 12.10.1994.

3. Shri Sant Lal, learned counsel for the applicant has submitted that, in any case, from 1.12.1994 as per the order issued by the respondents themselves (Annexure A-1), the applicant has continued without any break for more than three years as EDA on regular basis. His contention is that no EDA could have been absent from his seat for more than six months at a time and since the applicant has been shown to have continued as EDA for more than this period which amounts to beyond three years, he has to be considered as regular EDA and

not as Substitute EDA. He relies on the order issued in December, 1994 for this purpose. The contention of the learned counsel for the applicant is that the order of the Chief Post Master General, Delhi Circle dated 12/13.5.1999 does not apply to his case and, therefore, he is entitled for an order of reinstatement as EDA.

4. The other main contention of the learned counsel for the applicant is that in the facts of this case, the applicant has continued to work as EDA from 18.5.1994 till 25.6.1999, that is for more than 5 years. He is, therefore, entitled to be regularised in the service w.e.f. 16.5.1994 (sic.) or any subsequent date from which he had worked as ED employee in Seelampur post office when the post fell vacant on account of promotion of Shri Shyambir Singh/Devender Kumar who are the regular incumbents of this post. Learned counsel has relied on the DGP&T letter dated 24.2.1970, as amended from time to time, including the letter of 14.2.1991. In this letter, it is provided that "leave should not ordinarily be availed by an ED Agent at frequent intervals. If an ED Agent is found to have taken leave at frequent intervals for a total period of 180 days or more in a period of one year, he shall cease to be an ED agent". He has also submitted that the respondents have not followed the Service Rules for ED Staff. His contention is that as the applicant has continued to discharge his service as an EDA for more than three years, they could not have discharged him without giving a show cause notice or holding a disciplinary proceeding under the Rules. He has, therefore, submitted that the termination of the applicant's services w.e.f. 25.6.1999 is arbitrary and illegal as it has not been done in accordance with the aforesaid Rules. He has also relied on a number of judgements, copies of which have

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been placed in the paper book. He has also drawn my attention to Annexure A-10 which is a photo copy of the Identity Card showing the applicant's designation as Stamp Vender. However, as the learned counsel was unable to show what the averments are in the pleadings with regard to this annexure, nothing further ~~need~~ be said in this regard. Shri Sant Lal, learned counsel has, therefore, submitted that the application may be allowed granting the aforesaid reliefs which have been mentioned in Paragraph 1.

5. During the hearing, Shri Sant Lal, learned counsel has relied upon another judgement of the Tribunal in ~~Smt.~~ **Durga Bhowmick and Ors. Vs. Union of India & Ors.** - (1989(5) SLR P-233). He has submitted that in terms of the order passed by the Calcutta Bench of the Tribunal, which had also taken into account the fact that the applicants had worked for more than 240 days in a year, the respondents may be directed to continue the applicant's service and he be regularised in that service. He has also referred to the judgement of the Supreme Court in **Bhagwati Prasad Vs. Delhi State Mineral Development Corporation** (1990(1) SCC 361). In **Bhagwati Prasad's case** (supra), the Supreme Court has also held that the practical experience would always aid the person to effectively discharge the duties and this is sure guide to assess the suitability.

6. I have perused the reply filed by the respondents and also heard Shri D.S. Mahendru, learned counsel. The main contention of the learned counsel for the respondents is that the applicant is not an ED employee, but he is a Substitute employee for the regular EDAs who have been nominated by these persons at their own risk and responsibility. This

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arrangement is in accordance with the Rules, as EDAs are required to nominate their Substitutes whenever the need arises to do so. The respondents have submitted that the impugned order of termination of service of the applicant w.e.f. 25.6.1999 has been issued by Respondent 4 with reference to the letter dated 12/13.5.1999 issued by Respondent 2 in which it had been mentioned that no arrangement vice ED regular employee could be allowed to continue beyond six months. Shri D.S. Mahendru, learned counsel has submitted that the Annexure A-1 letter issued in December, 1994, relied upon by the applicant, makes it amply clear that the applicant has been provided as a Substitute by the EDA who had been allowed to work as daily wager Post ~~Mail~~ i.e. on a higher post. He has also referred to the various judgements placed on record and has distinguished them on the facts. However, with regard to the Tribunal's order dated 30.3.1990 in OA 1639/89 with connected case, **Shri Sri Kishan Vs. SSPO, Southern Division, New Delhi** (Annexure A-6), he has submitted that those applicants were also Substitutes for EDAs, who had worked for more than three years. In that case, the respondents were directed, *inter alia*, to hold supplementary Literacy Test for recruitment to the cadre of Postman and Group 'D' cadre from EDAs, whichever is applicable. Shri D.S. Mahendru, learned counsel has submitted that no such prayer has been made by the applicant in this case for appearing in the Literacy Test in future nor has any averment been made that during the period of service as a Substitute EDA, he ever applied for being given this chance to appear in the test. The learned counsel has also distinguished the facts in the other cases placed on record, stating that the applicants in those cases were regularly appointed persons whereas the applicant is only a substitute

employee and cannot be considered ~~at~~ par with them. Learned counsel has, therefore, submitted that as the applicant had continued beyond the permissible period of six months as a substitute for an EDA as also on provisional basis as per the order ~~as~~ per Annexure A-1, there was nothing wrong in the subsequent termination order passed by Respondent 4, in terms of the letter issued by Respondent 2 dated 12/13.5.1999. He has emphasised that the applicant has never been appointed as a regular employee by the respondents and the O.A. is, therefore, based on mistaken facts. He has also submitted that the applicant has rushed to file the O.A. on 6.7.1999 without even making a representation to the respondents to consider his case for either alternate appointment or for being continued in the same capacity, if possible. In the circumstances, he has prayed that the O.A. may be dismissed.

7. I have carefully considered the pleadings and given anxious thought to the rival contentions made by the learned counsel for the parties.

8. The impugned termination, which is stated to be done orally by Respondent 4, terminating the services of the applicant w.e.f. 25.6.1999 has been done purportedly in furtherance to the order passed by the Chief Post Master General dated 12/13.5.1999. This order has been passed on the subject of "Appointments of ED Substitutes", bringing to the notice of the concerned Heads of Units that the appointments of ED agents as Substitutes and on provisional basis are strictly to be complied with by all the appointing authorities concerned. It has been reiterated that such type of arrangements are not allowed to continue beyond six months. It has been further stated that if any of these instructions

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have been found to have been violated, action should be taken against the persons responsible for the same. In the earlier order passed by DG P&T dated 18.5.1979, it is stated that the authorities have noticed that provisional appointments made to EDI posts are being allowed to continue for indefinite periods and when regular appointments are made, the provisionally appointed persons do not readily hand over the charge. In this letter, it has been further stipulated that the provisional appointments should be made only for specific periods and the appointed person should be given to understand that the appointment will be terminated on expiry of the specific period and he will have no claim for regular appointment. In the circumstances, the letter issued by the Chief Post Master General, Delhi Circle dated 12/13.5.1999 on which a prayer has been made may be struck down, does not appear to be either illegal or ultra vires the general provisions as laid down in DGP&T letter dated 18.5.1979. In the circumstances of the case, the prayer at Paragraph 8(a) to quash the impugned order dated 12/13.5.1999 is rejected.

9. A perusal of the letter issued in December, 1994 (Annexure A-I) relied upon by the learned counsel for the applicant, clearly states that the applicant has been appointed as a Substitute against one Shri Devender Kumar, EDA who has been allowed to work as daily wager Postman. Although from the aforesaid letters issued by the respondents dated 18.5.1979 followed by the letter dated 12/13.5.1999, such arrangements which are to be made either on provisional basis or ^{by} _A Substitutes should not have continued for an indefinite period of time and should normally be allowed to continue not beyond six months, those instructions do not appear to have been followed in the present case. It is for that reason that

the applicant has been continuing as a Substitute for the EDA beyond six months and in this case almost upto five years. Merely because the applicant has continued for a period beyond the permissible period or even beyond three years cannot confer on him the status of a regular employee until such an order is passed by the competent authority. No such order has been placed on record or shown to me. Hence, based on Annexure A-I letter issued by the respondents, I am unable to agree with the contentions of the learned counsel for the applicant that this letter is a letter appointing the applicant as regular EDA w.e.f. 1.12.1994.

10. Even if the applicant cannot be considered as a regular appointee, the fact remains that he has continued as a Substitute for EDAs for the period from 1.12.1994 till 25.6.1999. Shri Sant Lal, learned counsel for the applicant has submitted during the hearing that he does not press the earlier period which is shown in paragraph 4.3 of the reply of the respondents, namely, that the applicant was a substitute for one Shri Shyambir Singh from 18.5.1994 to 10.7.1994 and again 18.7.1994 to 12.10.1994. Be that as it may, the facts also show that the applicant has put in more than three years service as a substitute EDA. To this extent, I find force in the submissions made by Shri Sant Lal, learned counsel that the judgement of the Tribunal (Calcutta Bench) in Smt. Durga Bhomic's case (supra) is applicable. In that case, it was noticed by the Tribunal that the main contention of the respondents was that all the applicants have been working as Substitutes of their respective EDAs. The order passed by the respondents in December, 1994 (Annexure A-I) read with their reply given in Paragraph 4.3 in the present case show that the respondents themselves have continued the applicant as

Substitute for different EDAs for the periods shown by them, at least from 1.12.1994 to 25.6.1999. This date has not been disputed by the learned counsel for the respondents and the impugned order challenged in this case by the applicant is said to have been issued on 25.6.1999. The Calcutta Bench of the Tribunal had, taking into account the facts, including the fact that the applicants have been working as Substitute EDA with occasional breaks for a number of years, allowed the application with a direction to the respondents not to terminate the services of the applicants and to consider their appointments/absorption in any existing vacancy of EDAs or when such vacancies will arise in near future. In the present case, as the applicant has already been terminated from service w.e.f. 25.6.1999, the direction not to terminate the services of the applicant in the present case will not arise.

11. In the result, taking into account the facts and circumstances of the case, the application is disposed of with the following direction:

The respondents to consider the regularisation/absorption of the applicant as EDA or in any other suitable post for which he is eligible in accordance with the Rules and regulations, either against any vacant post or any other future vacancy that may arise, as soon as possible. His past services should also be taken into account while considering his case. Accordingly, interim order stands vacated. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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