

*CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD*

Allahabad, this the 17th day of February, 2021

Present:

HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER-J
HON'BLE MR. DEVENDRA CHAUDHRY, MEMBER-A.

ORIGINAL APPLICATION NO. 330/00826/2020

Chandra Prakash Tripathi, aged about 47 years, S/o Late Paras Nath Tripathi, R/o V. & P – Labanapur, District - Basti.

.....Applicant.

V E R S U S

1. Union of India through Chief Post Master General, U.P. Circle, Lucknow.
2. Post Master General, Gorakhpur Region, Gorakhpur.
3. Superintendent of Post Office, Basti Division, Basti.

..... Respondents

Present for the Applicant : Shri A.K. Srivastava
Shri M.K. Srivastava

Present for the Respondents: Shri Chakrapani Vatsyayan

ORDER

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

By means of the present OA, the applicant has prayed for the following reliefs: -

“8. Relief(s) sought: -.....

8.1. Issue a writ, order or direction in nature of mandamus commanding the respondents to consider the applicant for continuation of service, hence no one has been up to date is being appointed on regular basis and otherwise to consider the appointment on privileges availed for substitute for appointment. It has to be complied with because the order dated 29.03.2005, passed in Original Application No. 1187

of 2003 Chandra Prakash Tripathi Vs. Union of India & Others has got finality due to no further challenging the order dated 29.03.2005 is being made before any court of law.

8.2 Issue any suitable writ order or direction as the Hon'ble Tribunal may deem fit and proper under the facts and the circumstances of the case.

8.3 Award the costs of the original application in favour of the applicant."

2. At the very outset, Shri Chakrapani Vatsyayan, learned counsel for the respondents, who has appeared on advance notice at the stage of admission, has vehemently opposed the admission of this OA by contending that the applicant has no case because the matter has been finally decided by the Hon'ble High Court and the applicant is unnecessarily re-agitating the same matter on frivolous grounds.

3. Learned counsel for the applicant has contested the aforesaid preliminary objection by submitting that as the order dated 29.03.2005 passed in OA No. 1187/2003, was never challenged before any court of law. Therefore, the respondents can be directed to comply the order dated 29.03.2005

4. Heard Shri A.K. Srivastava, learned counsel for the applicant and Shri Chakrapani Vatsyayan, learned counsel for the respondents and perused the record.

5. According to the applicant, he was engaged on the post of Gramin Dak Sewak / Mail Carrier (in short GDS/MC) on 01.11.2002, when, due to retirement of a regular employee, the aforesaid post fell vacant. Thereafter, he was allowed to continue on the said post under the instructions of Post Master General for a long period. However, vide order dated 05.09.2003, his services were terminated. Being aggrieved, the applicant filed Original Application No. 1187/2003 – Chandra Prakash Tripathi Vs. UOI & Ors before this Tribunal challenging his termination order dated 05.09.2003. That OA was decided vide order dated 29.03.2005 (Annexure A-2) in favour of the applicant and the termination order was quashed. The operative portion of the order dated 29.03.2005 is reproduced below for a ready reference: -

“6. In the end, the OA succeeds. The order dated 5th September, 2003 is quashed and set aside. Consequently, any order passed in the wake of the said order dated 5th September, 2003 would also become nonest. The applicant is entitled to continue to work as GDS provided his appointment is in accordance with the procedure, which should be verified from the records. The respondents are at liberty to take suitable steps for filling up of the post of GDS/EDDA on regular basis and in that event, the concessions/benefits are as available to the substitute shall be made available to the applicant.

6. However, the services of the applicant were again terminated vide order dated 26.04.2005 (Annexure A-3) against which, the

applicant filed 2nd OA No. 512/2005, in which the following interim order was passed on 04.05.2005 (Annexure A-4) during its pendency: -

“.....After hearing the applicant in person, we are of the view that in order to decide the issue, it would be better, if the original records in this regard are produced before the court. Accordingly, it is ordered that the applicants be immediately engaged on the post from which they have been disengaged.

List on 19.05.2005.”

7. On 26.07.2005, in the aforesaid OA i.e. 512/2005, this Tribunal passed the following order observing once again that perusal of record is necessary for coming to a right conclusion: -

“.....It appears that no purpose would be served without perusing the original records.

In the interest of justice, we are of the view that some responsible officer of the department may present himself alongwith records on the next date.

List on 29.08.2005.”

8. The aforesaid OA No. 512/2005 was finally decided by this Tribunal vide order dated 04.11.2011 (Annexure A-8), the operative portion of which reproduced below: -

“13. Learned counsel for the respondents also cited a judgment of Hon’ble Supreme Court reported

in (2006)4SCC page 1 - Secretary, State of Karnataka and others Vs. Umadevi (3) and others. The Hon'ble Apex Court held that there is no fundamental right available to those persons who were appointed on contractual basis. They cannot claim that they have a right to be adsorbed in services. Hence, learned counsel for the respondents argued that applicants' services cannot be regularised. We have perused the judgment of Hon'ble Supreme Court and we are of the opinion that case of the applicants is worst than the case of the respondents before the Hon'ble Supreme Court. The applicants were never appointed as Daily Wager or Substitute by the competent authority and hence they have no right.

14. For the reasons mentioned above, we are of the opinion that the applicants failed to show that they have been legally appointed or engaged by following the procedure as provided in the Rules relating to GDS and applicant No. 2 was engaged by his own father at his own place as GDS when a person holding the post of Postman was transferred and Shri Ram Ujagir Mishra was ordered to work as Postman in addition to his work, and rather following the direction of the respondents, he engaged his own son and it is absolutely illegal and devoid of any merit. Moreover, engagement and appointment of the applicant no. 1 is against the law. He has only been engaged illegally. The applicants are not entitled to any relief. The OA is liable to be dismissed.

15. O.A. is dismissed. Stay granted earlier, if any, is vacated forthwith. No costs.”

9. The applicant challenged the above cited order dated 04.11.2011 (Annexure A-8) before Hon'ble High Court by means of Writ(A) No. 72845/2011 (Chandra Prakash Tripathi Vs. Central Administrative Tribunal & others, which was dismissed by the Hon'ble High Court vide order dated 19.01.2018 observing as follows: -

“.....There is no illegality in the impugned order since the petitioner was allowed to work as a substitute without following the procedure and as such, even when the earlier petition of the petitioner was decided, this was the direction of the Tribunal that the petitioner will continue to work till the regular incumbent is appointed on that post provided that the appointment of the petitioner was in accordance with the procedure which should be verified from the records. After verifying the record it was found that the appointment of the petitioner was not in accordance with the procedure and , as such, no interference is required by this Court in the impugned order. Accordingly, the present petitioner is hereby dismissed.”

10. Thus, it is apparently clear that the applicant has challenged his termination order upto the Hon'ble High Court and has not got any relief. Admittedly, the applicant has not challenged the order of Hon'ble High Court before Hon'ble Supreme Court.

11. In so far as the contention of learned counsel for the applicant, that the order dated 29.03.2005 passed in 1st OA No. 1187/2003

being not challenged, has attained finality and the applicant should be allowed to continue in service on the basis of that order, is concerned, we do not find any substance in it. The OA No. 1187/2003 was allowed by a conditional order and the applicant was allowed to continue to work as GDS, provided his appointment was in accordance with the due procedure, which was to be verified from the records. Thereafter, the records were summoned by this Tribunal and after verification, it was found that his initial appointment was not in accordance with law and the due procedure.

12. The Hon'ble High Court has also in very clear terms has observed that 'after verifying the record it was found that the appointment of the petitioner was not in accordance with the procedure'.

13. In view of the entire history of litigation, as quoted above, there does not appear any case of the applicant worthy of even admission. Accordingly, the OA is liable to be dismissed at the admission stage itself.

13. The OA is dismissed.

14. No order as to costs.

(DEVENDRA CHAUDHRY) **(JUSTICE VIJAY LAKSHMI)**
MEMBER- A. **MEMBER- J.**

Anand...