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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No. 546/90.

Decided on 14-11-1990.

Raj Singh

.....Applicant.

vs.

1. Union of India through Secretary, Ministry of
Communication, New Delhi.

2. Sr. Superintendent of Post Offices,
Central Division Krish Bhawan, New Delhi.

3. Asstt. Superintendent of Post Offices,
Incharge Central 1st Division, Rail Bhawan, New Delhi.

.....Respondents.

For the Applicant - Shri B.S. Gupta, Advocate.

For the Respondents - Mrs. Raj Kumari Chopra, Advocate.

CORAM: Hon'ble Shri M.M. MATHUR, ADMINISTRATIVE MEMBER.
Hon'ble Shri S.R. SAGAR, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed *yes*
to see the judgment?

2. To be referred to the Reporter or not? *NO*

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE
SHRI M.M. MATHUR, ADMINISTRATIVE MEMBER)

The Applicant who is working as Extra Departmental Stamp Vendor (for short 'EDSV') in the Post Office of Baroda House, New Delhi under Respondent No. 2 has filed this Application under Section 19 of the Administrative Tribunals Act, 1985 praying that he may be allowed to appear in the literacy test for appointment as regular Group 'D' employee to be held on 22.4.1990 or on any subsequent date. He has also prayed for regularisation of his services as Postman or Group 'D' employee as permanent.

2. The Application was admitted on 30.3.1990 and as an interim measure the Respondents were directed to provisionally allow the Applicant to appear in the literacy test to be held on 22.4.1990 or on any subsequent date. During a subsequent hearing on M.P. filed by the Applicant the Respondents were also directed to maintain status quo as regards the continuance

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of the Petitioner as Extra Departmental Agent.

2. Briefly stated, the essential facts of the case are that the Applicant was appointed as E.D.S.V. at Baroda House Post Office, New Delhi as Paid Substitute w.e.f. 1.4.1985 in place of Shri Bheep Singh, regular incumbent of the post, who had proceeded on leave vide order dated 1.4.1985 (Annexure A/1). Since then, the Applicant has been working continuously in the same post and hence has completed more than 4 years service as Extra Departmental Employee. Under the Rules of the Postal Department relating to Promotion (Annexure A/4) prospects/E.D. Agents who have put in more than three years of service and who are below the age of 42 years are eligible to appear in the literacy test for regular appointment to the Cadre of Postmen as well as other Group 'D' posts. Since the Applicant fulfilled both these conditions, he applied for appearing at the literacy test held on 16.7.1989 but he was not allowed to appear at the aforesaid examination. Against this denial the Applicant submitted representation dated 1.8.1989 (Annexure A/2) addressed to Respondent No. 2 which was rejected vide communication dated 21.9.1989 (Annexure A/3) intimating that the Applicant was not allowed to appear at the examination being Paid Substitute. The Applicant has now filed the present Application seeking directions to the Respondents to permit him to appear at the literacy test which was held on 22.4.1990. According to the Applicant he fulfills all the eligibility conditions prescribed in the Rules and he was provisionally allowed to appear in the said examination in pursuance of an interim order dated 30.3.1990; but the result has not been declared pending decision of the Application.

3. The Respondents have resisted the claim of the Applicant on the ground that the Applicant is neither a

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regular E.D.S.V. nor a Casual Labourer; but only a Paid Applicant's Substitute. Their contention is that / services were in the nature of a contract between him and the regular E.D.S.V., Shri Bheep Singh, who had proceeded on leave and under the rules such Paid Substitutes have no status in the Postal Department and as such are not eligible to appear at the literacy test for further promotion.

4. During arguments, the learned counsel for the Applicant invited our attention to the judgment of the ^{entitled} Principal Bench of this Tribunal in the case / Sri Kishan Vs. Sr. Supdt. of Post Offices, Southern Div., New Delhi - D.A. 1639/89; Dinesh Kumar Sharma Vs. Sr. Supdt. of Post Offices, Delhi East Divn. & Another - DA-1648/89 delivered on 30.3.1990. The Applicants in that case were also working as Paid Substitutes against the posts of E.D. Agent during the absence of the regular incumbents. Both the Applicants had rendered 4 years service as E.D. employees and were below the age of 42 years prescribed under the rules; but they had not been permitted to appear at the literacy test for regular recruitment to Group 'D' cadre. The Respondents had contested the Applications on the same ground that the paid substitutes / were not regular E.D. employees and / were not eligible for taking the examination under the rules. After carefully considering the pleadings of both the parties, the Tribunal had held that the substitutes who have worked continuously for more than 3 years are eligible to appear in the departmental literacy test conducted by the Respondents. Heavily relying upon the aforesaid judgment of the Tribunal the learned counsel for the Applicant pleaded that the facts and circumstances of the present case are exactly similar to those in the case of Sri Kishan and Dinesh Kumar Sharma (supra) and consequently,

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the Applicant is also entitled to the same relief as has been granted by the Tribunal in the aforesaid judgment.

5. The learned counsel for the Respondents contested the claim of the Applicant primarily on the ground that under the rules only regular E.D. employees or casual labourers who have put in 3 years of service and are below 42 years of age; are eligible to appear in the literacy test. Since the Applicant was neither E.D. employee nor casual labourer but worked only/paid substitute, he was not eligible to appear at the literacy test as per rules. In support of her contention, the learned counsel invited our attention to the Director General's letter dated 7th June, 1968 vide which a regular E.D. Agent is permitted to proceed on leave by providing a substitute approved by the appointing authority. During such period all allowances payable to the E.D. Agent will be paid to the approved substitute. She argued that in such cases the arrangement of a substitute is in the nature of a 'contract' between the substitute and the regular E.D. Agent and in case the regular E.D. Agent reverts back, he will automatically get back his job and the services of the substitute will stand terminated. Regarding the applicability of the judgment of this Tribunal in the case of Sri Kishan and Dinesh Kumar Sharma (supra), the learned counsel submitted that the said judgment was not based on full and correct appreciation of the facts and needs to be reconsidered.

6. We have gone through the records of this case and have heard the arguments advanced by the learned counsel for both the parties.

7. The case of the Applicant almost entirely rests on the judgment rendered by this Tribunal in the case of

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Sri Kishan(supra). Although the learned counsel for the Respondents contended that the facts of the two cases are not exactly similar, on going through the pleadings in that case, we do not find any material dis-similarity in the facts and circumstances of the two cases. In the case of Sri Kishan (supra) also the Applicants, as in the present case, were appointed as 'paid substitutes' against posts vacated by the regular incumbent. In fact, the appointment orders in both the cases have been worded in the same language. There is no indication in their appointment letter that the name of the Applicant as a substitute was proposed by Shri Bheep Singh, regular EDSV or there was any sort of contract between the two. In fact it has been clearly stated in the appointment letter that the Applicant will draw his allowances as admissible against the post of E.D.S.V. w.e.f. 1.4.1985 "till further orders." We, therefore, do not find any force in the argument of the learned counsel for the Respondents that the Applicants appointment as paid substitute was a contractual arrangement between him and Shri Bheep Singh. It is an undisputed fact that the Applicant has been continuously working against the post of E.D.S.V. at Baroda House Post Office since 1.4.1985 and that regular incumbent Shri Bheep Singh has not resumed his duties so far. According to Rule 5 of E.D.A. Conduct and Service Rules, an E.D. Agent who remains on leave for more than 180 days in a year shall cease to be an E.D. Agent. In the present case the regular incumbent is absent since 1.4.1985 and the Applicant has been continuously working in his place for more than 4 years. We have not been shown any specific rule or order which prohibits the substitute E.D. employees from appearing in the literacy test even if they fulfil all the eligibility conditions. We are, therefore, fully in agreement with the view held by this Bench in the case

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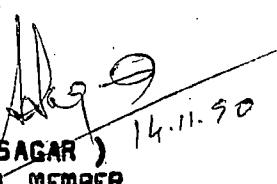
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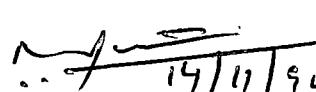
of Sri Kishan and Dinesh Kumar Sharma (supra) that the substitutes who have worked continuously for more than 3 years and are below 42 years of age should be eligible to appear in the departmental literacy test conducted by the Respondents.

8. In view of the foregoing discussion, the Application is hereby allowed and the Respondents are directed to treat the Applicant as eligible for appearing in the departmental literacy test already conducted on 22.4.1990 and in all such tests to be conducted in future. In case the Applicant qualifies at the literacy test, he should be considered for appointment as Postman/Group 'D' employee and also for regular absorption in Group 'D' cadre according to his seniority.

9. The Application is disposed of in the terms stated here-in-above. There will be no order as to costs.


(S.R. SAGAR)
JUDICIAL MEMBER

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(M.M. MATHUR)
ADMINISTRATIVE MEMBER

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