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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2568/2004

New Delhi, this the 5th day of December, 2005

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Mr. Yogesh Kumar Bhardwaj,
Son of Shri Asha Ram,
Resident of Mohalla Kamaliyan Gate,
Miranpur, Distt. Muzaffarnagar (U.P.)

...Applicant.

(By Advocate Shri Vineet Maheshwari)

VERSUS

1. Union of India
Through Secretary Communications
Ministry of Communications,
New Delhi.
2. Director General Post
Sanchar Bhawan
Parliament Street,
New Delhi.
3. Chief Post Master General
Sectrate
Lucknow
4. Post Master General,
Bareilly (U.P.)
5. Senior Post Master,
Main Post Office,
Muzaffarnagar (U.P.)
6. Sub-Divisional Inspector (Postal)
Post Office Khatauli
Khatauli, Distt. Muzaffarnagar (U.P.)

..Respondents.

(By Advocate Shri K.R. Sachdeva)

O R D E R (ORAL)

By the present OA, applicant seeks direction to respondents to confirm /
regularize him with consequential benefits.

2. Admitted facts of the case are that the applicant was appointed as Extra
Departmental Runner at Post Office Khatauli, Distt. Muzaffarnagar (U.P.) on
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temporary post w.e.f. 01.11.2001 on a consolidated salary of Rs.1220/- per month plus allowances. He continued to work till 30.4.2003 without any break. He, on completion of 240 days of service without any break, submitted a representation dated 16.1.2003 to regularize him, which was followed by reminder dated 20.2.2003. His services were terminated on 30.4.2003. However, he was again allowed to work from 14.5.2003 to 30.6.2003.

2. It is the contention of the applicant that he is liable to be regularized in terms of settled law on the said subject.

3. The respondents contested the applicant's claim laid in the present OA and stated that Sh. Sukhpal Singh, GDS Runner was a permanent employee and he had ordered the applicant to work as Substitute. Arrangement to employ him was purely temporary without issuing any order of appointment. Since Shri Sukhpal Singh, returned back to his post, the applicant's services were no longer required and, therefore, terminated. In view of the Director General, Posts directions issued vide communication dated 21.10.2002, a substitute has no legal right for regularization. The applicant was never regularly appointed to the post in question and, therefore, he has no legal right to be regularized.

4. The applicant contested the respondents' averments by filing a rejoinder affidavit.

5. I have heard learned counsel for parties and perused the pleadings. Shri Vineet Maheshwari, learned counsel appearing on behalf of applicant strenuously urged that in terms of D.G., Posts instructions dated 06.6.1988 regarding recruitment governing to the cadre of Group 'D' posts, the order of preference for these posts is as under:-

- a) Non-test cadre
- b) ED employees

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- c) Casual labourers
- d) Part-time casual labourers

6. With reference to the above OM, it was contended that casual labourers whether full-time or part-time, who are eligible to be appointed as ED Runner, are liable to be appointed on fulfillment of all conditions and who have worked a minimum period of one year. It is contended that since he has completed one year of service, he is liable to be considered to the post of ED Runner. Shri K.R. Sachdeva, learned counsel for respondents, on the other hand, drew my attention to the aforesaid DG, Posts letter dated 21.10.2002 and contended that the said instructions would apply in the facts and circumstances of the present case, and as has been held by Hon'ble Supreme Court in *Union of India & Ors. vs. Debika Guha and Ors. [2001 SCC (L&S) 90]*, the Substitutes have no legal right to claim for regularization even if they have rendered longer period of service. It is for the department to consider as to whether they are fit or not for absorption by passing an appropriate order. It is further contended that ineligible persons cannot be appointed even as Substitutes and they cannot be allowed to continue for longer periods. Shri K.R. Sachdeva, learned counsel further drew my attention to para 12 of the said OM wherein it is stated that a provisional appointee to be placed on a waiting list for being considered for a regular appointment after he/she had completed three years of continuous employment. It is contended that since the applicant has not completed three years of continuous service in terms of the aforesaid communication, the applicant is not entitled to regularization.

7. On bestowing my careful consideration to the above aspects, I am of the considered view that since the applicant has not completed three years of regular service as prescribed in the aforesaid OM, he is not entitled to regularization. However, it is not the case of the respondents that the aforesaid OM of 1988

[Signature]

stands overruled / modified vide the aforesaid OM dated 21.10.2002. Since the OM of the year 1988 as noticed hereinabove remains to be in vogue, the applicant would be entitled to preference for appointment as ED Agent as and when such need arises, particularly as on date he has no legal right as there is no vacancy, as the regular employee Shri Sukhpal Singh is occupying the above post of ED Runner, at Post Office Khatauli, Distt. Muzaffarnagar (U.P.).

8. In view of the above, as and when the need / necessity to employ EDS arises, applicant would be given preference for employment vis-à-vis freshers and outsiders, in terms of the aforesaid OM.

9. Accordingly, OA is disposed of. No costs.


(Mukesh Kumar Gupta)
Member (J)

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