

CAT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2186/92
T.A. No.

199

(23)

DATE OF DECISION 22.1.98

Sh. Dinesh Kumar

Petitioner

Sh. Sant Lal

Advocate for the Petitioner(s)

Versus

UOI & Ors

Respondent

Sh. K. R. Sachdeva

Advocate for the Respondent

CORAM

The Hon'ble Sh. S. R. Adige, Vice Chairman (A)

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

1. To be referred to the Reporter or not? *Yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 2186/92

(2A)

New Delhi this the 22nd day of January, 1998

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

Shri Dinesh Kumar,
S/o Shri Ram Dularey,
employed as Extra Departmental Packer in
Hauz Khas New Delhi Post Office,
New Delhi. Applicant.

By Advocate Shri Sant Lal.

Versus

1. The Union of India, through
The Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General,
Delhi Circle,
Meghdoot Bhawan,
New Delhi.
3. The Senior Superintendent
of Post Offices,
New Delhi South West Division,
New Delhi-110021. Respondents.

By Advocate Shri K.R. Sachdeva.

O R D E R

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

The applicant is aggrieved by the respondents' letter dated 18.2.1991, memo dated 13.2.1991 and memo dated 3.7.1989. He has sought the following reliefs:

(1) to quash the impugned order dated 18.2.1991 with regard to the decision of the Regularisation Committee of the Divisional level and treating the permission to take the examination of 27.1.1991 as provisional;

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(2) to direct the respondents to declare the result of the applicant in respect of the examination held on 27.1.1991 and make the appointment as Postman according to the merit obtained by him in the said examination;

(3) to direct the respondents that the applicant should be deemed to be in continuous service on regular basis w.e.f. 6.2.1985; and

(4) to grant consequential benefits of arrears of pay and allowances and seniority as also costs.

2. The relevant facts of the case are that the applicant relies on the memo issued by the respondents dated 29.3.1985 (Annexure A-5). In this memo it is stated that as Ramesh Kumar, Extra Departmental Stamp Vendor (EDSV), R.K. Puram, XII Post Office, New Delhi was deputed as daily wager Postman, R.K. Puram Post Office by memo dated 8.4.1983, the applicant, a substitute provided by Shri Ramesh Kumar on his personal responsibility was allowed to work as EDSV w.e.f. 6.2.1985 till further orders. The learned counsel submits that he has been appointed on the vacant post of EDSV, as the regular incumbent had been sent as daily wager Postman as mentioned in the memo. He claims that he was sponsored by the Employment Exchange. He has also stated that he was appointed in different post offices during the period 6.8.1985 to 1.2.1986 in place of

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regular departmental packers at wages higher than the EDSV. From 2.2.1986 upto 31.5.86, he claims that he worked as EDSV at Naroji Nagar, New Delhi, Post Office. According to him, the applicant was deputed to work as Packer and EDSV in number of Post Offices from 6.8.1985 till 10.11.1986 after which he was brought back to R.K. Puram, Sector XII post office as EDSV w.e.f. 11.11.1986. He states that by Assistant Superintendent Post Office's order dated 28.10.1988 his services were terminated illegally as he had already rendered more than 3 years of service and could not be terminated. He submits that he was later reinstated w.e.f. 2.12.1988 as EDSV but the respondents showed him as a substitute of Shri Karam Veer Singh, EDSV in R.K. Puram, V Post Office. On 13.3.1989, his services were again terminated verbally against which he made another representation on 15.3.1989. He was again reinstated in service and posted as E.D. Packer in Hauz Khas w.e.f. 25.5.1989.

3. The applicant claims that since he had rendered more than three years of service and had become eligible for taking the departmental examination for appointment/promotion to the cadre of Group 'D' posts and Postman, he had applied to take the Postman examination in 1989 which was rejected. He again applied for taking the Postman examination scheduled to be held on 7.10.1990 and was granted permission and issued Roll No. However, he failed to qualify in Paper I. He once again applied for the examination to be held on 27.1.1991 and permission was granted and he appeared. He states that his name was not in the list of successful candidates. The respondents/SSPOs, South West Division, New Delhi had

✓ also intimated that the applicant was permitted to appear in the examination provisionally pending decision of the Regularisation Committee constituted at the Divisional level. That Committee did not consider the applicant fit for regularisation of ED service from the date he was engaged as substitute.

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4. The applicant has contended that Extra Departmental Employees (EDEs) are not liable for transfer from one post office to another. Therefore, the respondents' action to transfer him frequently was illegal. He also claims that he has been appointed as EDSV as sponsored candidate from the Employment Exchange and appointed in R.K. Puram Post Office w.e.f. 6.12.1985 and was not a substitute provided by Shri Ramesh Kumar as stated in Annexure A-5 memo. He also relies on the memo dated 29.3.1985 wherein he had been deputed as daily wager Postman. In the above circumstances, Shri Sant Lal, learned counsel for the applicant, has submitted that the reliefs as prayed for may be granted and the applicant should be considered as regularly appointed and that the result of the examination he took on 27.1.1991 for the post of Postman should not be withheld as provisional.

5. The respondents have filed their reply and we have also heard Shri K.R. Sachdeva, learned counsel. They have submitted that the applicant has worked as Substitue E.D. Agent for the intermittent periods from 6.2.1985 to 13.3.1989. They have stated that there was a break in his service as Substitute E.D. Agent during the periods from 6.8.1985 to 18.2.1986, 3.6.1986 to 7.7.1986

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and 1.11.1988 to 1.12.1988. They have submitted that since his case was under consideration, he was provisionally allowed to appear in the departmental examination for the post of Postman held in January, 1991 but his result was withheld. According to them, the applicant was only a Substitute E.D. Agent provided by regular E.D. Agents and as such condonation of break in service was not allowed. They have submitted that since he had not worked continuously ^{for 3} three years as Substitute E.D. his representation for declaring the result was rejected. They have further stated that the applicant has also failed to furnish proof of his having been sponsored by the Employment Exchange. In pursuance to the Tribunal's directions the respondents have filed an additional affidavit which we have also seen. In this, they have submitted that the applicant had been provided as a substitute of Shri Ramesh Kumar, EDSV, R.K. Puram, XII Post Office. However, they have stated that unfortunately the application of Shri Ramesh Kumar is not traceable. They also rely on an application submitted by the applicant to the ASPO, New Delhi that he was willing to work vice Shri Ramesh Kumar, EDSV and whenever he was spared from there, he will again work as Daily Wages packer. Thereafter, they have stated that one Shri Rakesh Kumar, EDSV was engaged as Stamp Vendor at Sarojini Nagar Enclave Post Office and he offered the applicant as his substitute by application dated 18.2.1986. In the circumstances, they have submitted that the applicant was only working as substitute in various post offices and was not working regularly ^{as} EDSV, as claimed by him. According to them, the applicant has

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been appointed on regular basis w.e.f. 28.5.1989 as a fresh appointee and hence they have submitted that the application may be dismissed.

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6. In the rejoinder filed by the applicant he has disputed the facts as given in the reply by the respondents. According to him, Shri Ramesh Kumar was regular EDSV, R.K. Puram w.e.f. 6.2.1985 and, therefore, the question of providing any substitute in his place did not arise. He has reiterated that Shri Ramesh Kumar had already relinquished the post of EDSV and had been working as Postman in R.K. Puram (Main) Post Office, New Delhi since 8.4.1983 which is evident from the order dated 29.3.1985 (Annexure A-5). He, therefore, contends that it is wrong to state that he had been provided as substitute E.D. agent and contends that he has already been appointed as EDSV in Sector XII, R.K. Puram Post Office, New Delhi against the vacancy of Shri Ramesh Kumar. The learned counsel for the applicant has, following the judgement of the Supreme Court in **Banaras Hindu University Vs. Dr. Inder Pratap Singh** (1992(2) SLJ P-1), submitted that even if there is a break of one month, it should be construed as continuous service. He has also relied on **Umesh S. Naik Vs. Karnataka Food and Civil Supplies Corp.** (1992(3) Current Service Law Journal Page 326) and **Shri Sri Kishan Vs. Senior Supdt. of Post Office** (O.A. 1639/89 with connected case), decided on 30.3.1990.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. The Annexure A-5 memorandum shows that Shri

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Shri Ramesh Kumar, EDSV, R.K. Puram, XII Post Office was deputed as daily wager Postman in the same post office and the applicant was then posted as a substitute provided by Shri Ramesh Kumar. It is also seen that the respondents have not been able to produce the application of Shri Ramesh Kumar in this regard that he had provided the applicant as substitute. It is also evident that the respondents themselves have utilised the services of the applicant as E.D. Agent in several post offices from Febrary, 1985 to 1989 although with some breaks. (b)

8. The Hon'ble Supreme Court in **Banaras Hindu University, Varanasi and Anr. Vs. Dr. Indra Pratap Singh** (1992(2) SLJ P-1) to which our attention was drawn has held that the expression 'continuous service' cannot be construed literally, taking into account the objective of the rule e.g. to have 8 years teaching experience and had condoned the break in service of 3 months and 20 days. This judgement of the Supreme Court is relevant to the facts of this case. The applicant has been working with the respondents for a fairly long period from 6.2.1985 to 13.3.1989 with intermittent breaks. It is also noticed that the respondents have utilised the services of the applicant whenever they required ^{him} ₂ in several Post Offices. It is also relevant to note that they themselves have allowed the applicant to appear in the departmental examination for the post of Postman in 1990, although he failed in that attempt. Thereafter, they have allowed the applicant to appear in the 1991 examination, although provisionally and the results have not been declared.

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9. In the above facts and circumstances of this particular case, we are, therefore, of the view that the intermittent breaks in service of the applicant should be condoned and we do so. We are also of the view that the applicant's result in respect of the departmental examination for appointment as Postman in which he had appeared on 27.1.1991 should be declared. In case he has qualified, he shall be entitled to consideration for appointment to the post in accordance with the Rules, and also for notional fixation of pay and seniority in that post but he shall not be entitled for payment of arrears of pay and allowances.

10. In the result, the O.A. is partly allowed, as above. No order as to costs.

Lakshmi

(Smt. Lakshmi Swaminathan)
Member (J)

SRD

Adige
(S.R. Adige)
Vice Chairman (A)