

OPEN COURT.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No. 413 of 1996.

Allahabad; this the 02nd day of April 2003.

Hon'ble Maj Gen KK Srivastava, Member-A.
Hon'ble Mrs. Meera Chhibber, Member-J.

1. Bahori Lal
Son of Shri Mukat Singh
Working as E.D.M.P. at Branch Post Office,
Sakari Jungal (Ujhani),
District: Badaun.

2. Smt. Kamala Devi
Wife of Shri Bahori Lal
Working as Substitute E.D.M.P. at Branch
Post Office, Sakari Jungal (Ujhani),
District Badaun.

Both resident of Burra Faridpur,
Post Sakari Jungal, District: Badaun.

.....Applicants.

(By Advocate : Sri A Kumar)

Versus.

1. Union of India
through Post Master General,
Bareilly (U.P.)

2. The Superintendent of Post Office,
Badaun.

3. Shri Suresh Chandra Sagar,
Sub-Divisional Inspector (south)
Sub-Division, Badaun.

4. Shri Kalyan Singh
Son of Shri Sheopal Singh
Working as E.D.M.P at Branch Post Office,
Sakari Jungal (Ujhani) Distt: Badaun,
Resident of Village Burra Faridpur,
Post Sakari Jungal (Ujhani),
District Badaun.

.....Respondents.

(By Advocates: Sri S.C. Tripathi/
Sri M.K. Upadhyaya)

O R D E R

(By Hon'ble Mrs. Meera Chhibber, J.M.)

By this O.A., filed under section 19 of the
Administrative Tribunals Act 1985, the applicants have
challenged the appointment letter dated 22.3.1996
(Annexure A-1) and notification dated 15.2.1996 (Annexure-2).
By Annexure A-1 Shri Bahori Lal was shown to be absent from
duty w.e.f. 18.1.94 and since the arrangement of substitute

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nominated by him worked more than 180 days, the authorities
felt, that, there was need to engage a ^{fresh} person to look
after the work of E.D.M.P. Sakari Jungal. Accordingly
Shri Kalyan Singh was provisionally appointed as E.D.M.P
Sakari Jungal. In the said letter it is made clear ^{that} the
provisional appointment is tenable till Disciplinary
Proceedings against Shri Bahori Lal are finally disposed of
and he has exhausted all the channels of departmental as
well as judicial appeals. It is further stated there in,
that in case it is finally decided not to take Bahori
Lal E.D.M.P. into service then he will be continued on
provisional basis till regular appointment is made, but
in case Shri Bahori Lal is taken into service his
provisional appointment shall be terminated without notice.
By Annexure A-2, five persons were called upon to give
application alongwith supporting documents, in case they
were interested in serving with the respondents. The
applicant has also sought a direction to the respondents
to constitute Medical Board of Eye Specialist who will
examine applicant No.1 medically and if he is found
medically unfit for postal service, he should be discharged
on medical grounds. Learned counsel for the applicant
submitted at the out set that on 22.12.1999, the office
of Chief Medical Officer certified that the applicant is
totally blind in both the eyes. Therefore, he shall not
be pressing relief No.2. Applicant No.1 is the person
who was initially appointed as E.D.M.P at Branch Post
Office Sakari Jungal (Ujhani) District Badaun and
applicant No.2 is wife of Shri Bahori Lal i.e., applicant
No.1 who was working as substitute in place of applicant
No.1.

2. The grievance of the applicants in this case is
that the wife of applicant No.1 was engaged as
substitute, but she was arbitrarily denied the duty and
another person namely Shri Kalyan Singh (respondent No.4)

has been appointed provisionally on the said post, vide appointment letter dated 22.3.1996. The applicants have submitted that without putting an end of applicant No.1 service, respondents could not have terminated the service of applicant No.2 as Substitute nor could they have given appointment to another person on provisional basis because applicant No.1 has been appointed as a regular E.D.M.P. at Branch Post Office, Sakari Jungal on 13.08.1979. It is further submitted by applicant No.1 that his medical leave was duly sanctioned w.e.f. 4.12.92 to 17.4.94, but thereafter, his leave was not sanctioned even though he has been sending his medical certificates from time to time. The ~~last~~ medical certificate is said to be dated 22.1.1996 in which doctor has advised treatment of 3 months in District Hospital Budaun (Annexure 4). Since the respondents, according to the applicant, acted in an arbitrary manner they had no other option, but to file this O.A.

3. The O.A. is opposed by the respondents who submitted by stating that applicant No.2 was engaged only as substitute and since the main appointee himself has been removed from service vide order dated 31.7.87 she cannot have any right to continue on the said post. More over she is not an employee of the respondents, therefore, her application is not maintainable. They have also submitted that the applicants have not exhausted the departmental ^{agreed} remedy in as much as, if they were ~~agreed~~, they ought to have filed representation to the higher authorities, but without approaching the higher authorities, the applicants filed the present O.A., therefore, it is not maintainable. On merits they have submitted that Shri Bahori Lal was granted leave on medical certificate w.e.f. 4.12.92 to 17.10.94 due to defect in his eye sight and during this period the applicant provided five substitutes on his responsibility out of which, initially it was Shri Bhure and for subsequent 2 occasions it

was Shri Harvesh Singh and from 18.08.93 to 17.10.1994 Smt. Kamla Devi his wife. Thereafter, the applicant remained absent from duty w.e.f. 18.10.94 without proper application of leave. The maximum leave admissible to a person is only 180 days as per Rule 5 of E.D.A.s (Conduct & Service) Rules 1964 and if an E.D.A remains on leave for more than 180 days at a stretch, he ceases to be an E.D.A, and in such case the substitute may be discharged by the appointing authority and if the absence from duty of the regular E.D.A. is likely to last indefinitely, the appointing authority is required to take immediate steps to make a regular appointment. In the instant case, the applicant No.1 had been absent for about 2½ years upto 17.10.1994 and, thereafter, it was not correct to continue his substitute Smt. Kamla Devi any longer. In support of their contentions they have annexed letters written by the authorities from time to time. He has also invited our attention to the letter dated 22.03.1996 whereby the Superintendent of Post Offices (In short S.P.Os) was directed to take suitable action, as the applicant No.1 has lost vision and was not in a position to work. It was further stated therein that leave can be sanctioned only on receipt of medical certificate or report of Eye Specialist. Therefore, the office of Post Master General Bareilly Region had directed the S.P.Os to deal with the case at his end. They have further submitted that since Sri Bahori Lal had submitted his medical certificates from private doctors, he was asked to report to the District Hospital for getting his eye examined by an eye specialist vide letters dated 13.02.1995, 8.3.1995, 7.8.95, 9.10.95 and 8.11.95, but he did not get his eye examined. The applicant was asked to change his substitute. It was changed from 26.12.1994 to 23.2.1995, but thereafter, the applicant did not change his *Accordingly* Substitute ~~one~~ she was not allowed to work from 23.2.1995. They have relied upon the letters annexures C.A. 4 to C.A. 8

of their C.A. Therefore, keeping in view the position of the applicants, in not joining the duty for a very long time as having lost his eye sight, the appointing authority ^{also B} initiated case for provisional appointment of E.D.M.C and appointed Shri Kalyan Singh w.e.f. 22.03.1996. They have further submitted that applicant No.1 was given a chargesheet on account of his unauthorised absence and after holding enquiry the applicant was removed from service vide order dated 31.07.1977. The applicant challenged his removal order by filing an appeal, which too was rejected on 30.4.2001 (Respondent's counsel has produced the original records for our perusal). The respondents have also submitted that the essential qualification for the post of E.D.M.C was 8th standard but the High School has to be given preference. Since Shri Kalyan Singh was having highest marks in High School amongst other candidates and he belongs to O.B.C. category, he was entitled for the preference. Thus he was selected as E.D.M.C. Therefore, there is no illegality in giving appointment to Shri Kalyan Singh on provisional basis.

4. The counsel for the private respondents also submitted that he submitted application pursuant to the letter issued by the Department and he was selected because he was having highest marks and his appointment was only on provisional basis till Shri Bahori Lal's case was decided finally in the Disciplinary proceedings and since Shri Bahori Lal has already been removed from service, the applicant has no right to challenge his appointment.

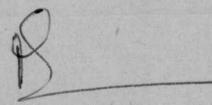
5. We have heard learned counsel for the parties and perused pleadings as well.

6. The applicant has admittedly been removed from service w.e.f. 31.07.1997 and the said order has not been challenged by him in the court of law meaning thereby that he has accepted the removal passed by the respondents.

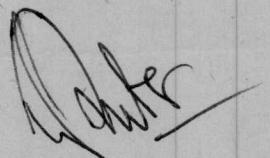
The respondents have explained it in detail as to why the need arose to engage another person on provisional basis, because the applicant was absent from a very long time.

Initially his leave was sanctioned by the Competent Authorities, thereafter, his leave was not sanctioned and inspite of letters written to the applicant to get himself medically examined by Eye Specilist, he did not report to Eye Specilist. Therefore, all this period was treated as unauthorised absence. The respondents have also annexed annexures to show that if a person remains absent unauthorisedly for more than 180 days, he ceases to be an E.D.A. In the instant case admittedly the absence of the applicant is much more than 180 days, therefore, he had no right to continue on the said post especially when he had lost his eye sight in both the eyes. It goes without saying that a substitute can not have ^a ~~a~~ better right than regular appointee because the substitute works only on guarantee of regular employee for the period of his sanctioned leave. There seems to be logic behind this arrangement, otherwise, the substitute will work indefinitely and this can be made a back door entry when the main employee is not in a position to work any longer. Therefore, in our considered opinion we ~~cannot~~ ^{do not B} find any illegality in appointing respondent No.4 as provisional E.D.M.C. in the facts and circumstances ^{as} explained above.

7. The O.A. is accordingly dismissed with no order as to costs.


Member-J.

pc/-


Member-A.