

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.546 of 2001.

Allahabad, this the 16th day of November, 2007.

Hon'ble Dr. K.B.S. Rajan, Member-J
Hon'ble Mr. K.S. Menon, Member-A

Ved Prakash Singh, Son of Durvijay Singh, Resident of Mohalla
Kanwarpur Sindh Quarter, House No.14 Bareilly.

.....Applicant.

(By Advocate : Shri B. Ram
Shri M.K. Upadhyay

Versus

1. Union of India, through Secretary, through Ministry of Post and Telegraph, New Delhi.
2. Post Master General, Bareilly Region, Bareilly.
3. Senior Superintendent Post Offices, Bareilly Region Bareilly.
4. Senior Post Master, Bareilly Head Post Office Bareilly.
5. Radhey Shyam Son of not known, R/o Village & Post Langura District Bareilly. (Extra-departmental Mail Postman) Bhamora District Breilly through Senior Post Master Head Post Office Bareilly.

...Respondents.

(By Advocate : Shri A.N Shukla)

ORDER

By Dr. K.B.S. Rajan, Member-J :

The applicant, an ITI certificate holder, was engaged as electricity khalasi against a vacant post, on daily wages w.e.f. 01-08-1997 vide order No. 167 dated 01-08-1987 which continued upto 31-12-1999. Even after Dec. 1999, the applicant claims to have worked as Electrical Khalasi and he was paid salary upto October, 2000. By order dated 24-11-

2000 the applicant was restrained from working and was stated that there was no further requirement of his services. In the place of the applicant, one Radhey Shyam, ED Mail Postman, Bhamora was permitted to join and his place (i.e. ED Mail Postman) one Sudhir Kumar was appointed. It appears that there was no selection the said Sudhir Kumar in accordance with the Rules. Challenge against the termination of the services of the applicant was registered vide OA No. 1483/2000 which was disposed of on 11-01-2001(Annexure A-8) with a direction to the respondents to dispose of the representation of the applicant. The representation was rejected by order dated 12-04-2001 spelling a reason that for the post of Electricity Khalasi, only the EDP be engaged. Applicant has challenged the rejection of representation and his termination and claimed the following relief:-

- (a) Quashing of order dated 24-11-2000 (Annexure 1)
- (b) Quashing or order dated 12-04-2001 (Annexure II)
- (c) Direction to the respondent not to give effect to the above orders.

2. Respondents have contested the OA. According to them, order dated 7th December, 1972 is specific and the same reads as under:-

“माननीय केट के निर्देशानुसार श्री वेद प्रकाश सिंह के प्रतिवेदन पर विचार करते हुए अधोहस्तादार कर्ता द्वारा दिनांक 28.3.2001 को कौन कौन पक्षो श्री वेद प्रकाश सिंह तथा श्री राधेश्याम को सुना गया तथा यह निर्णय दिया गया श्री वेद प्रकाश को आउट साइडर के रूप में डेलीवेज पर रखा गया था न कि नियुक्त किया गया था अतः हटाए जाने का कारण बताना या प्रतिवेदन पर सुंवसर देना नियम विरुद्ध है क्योंकि श्री वेद प्रकाश सिंह पुर्णतः बाहरी व्यक्ति है।

चुंकि आउट साइडर में विभाग के निर्देशानुसार इ0 डी0 कर्मचारी को ही लगाया जाना है यदि वह उस पद की वांछित योग्यता रखता है अतः श्री वेद प्रकाश सिंह का आउट साइडर पद पर बने रहने का कोई

दावा नहीं है। श्री राधेश्याम इ0 डी0 एम पी ममैरा के पद पर कार्यरत है। तथा उक्त पद की वांछित योग्यता भी रखते हैं। अतः उनको आउट साइडर पद पर रखा गया है।”

3. Counsel for the applicant argued that when from 1997 to 2000 the applicant was serving as Electricity Khalasi, there was absolutely no need to replace the applicant. The replacement is purely to accommodate Sudhir Kumar, in the place of Shri Radhye Shyam, EDMP who in turn was engaged in the place of the applicant. Shri Sudhir kumar was not appointed from open market. It is also the case of the applicant that the said Radhey Shyam was not duly qualified for the post of Electrical Khalasi.

4. Counsel for the respondent not being present at the time of hearing, the provisions of Rule 16(ii) of the CAT Procedure Rules, 1986 have been invoked.

5. According to the respondents, shri Radhey Shyam was qualified to be electrical khalasi.

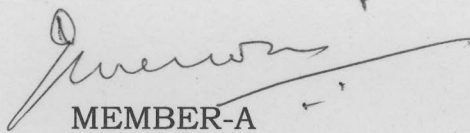
6. Arguments were heard and documents perused. True, 7th December, 1972 provides for ED agents being asked to perform the duties of Postman or Group D employees of the main postal department, by making substitute arrangements in their place. This order has been prevailing since 1972 and has thus been current even in 1997 when the applicant was engaged as Electrical Khalasi. Had the respondents resorted to the engagement of Radhey Shyam at that time, subject to his holding necessary qualifications, there was no legal flaw. The department had chosen to engage the ITI certificate holder, the applicant as electrical khalasi, who was discharging the duties admittedly without any complaint (see reply to para 4.3). And all of a sudden, his engagement was discontinued and Radhey Shyam was appointed in his place! While the qualification of the applicant has been admitted, no documentary proof is

provided by the respondents to substantiate their averment that Shri Radhey Sham had qualification for the post of Electrical Khalasi. It is not known as to what prompted the respondents to disengage the applicant, engage Radhey Shyam and in his place engage Sudhir Kumar. The very character/status (i.e. casual) of the engagement of Radhey Shyam Electrical Khalasi is no better than that of the applicant. This kind of replacement of a temporary/casual hand by another temporary/casual hand has not been approved by the Apex Court vide *State of Haryana vs Piara Singh* (1992) 4 SCC 118, wherein it has been held, *an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.* This decision by a Division Bench of the Apex Court has the tacit approval of the Constitution Bench of the Apex Court, vide Secy. *State of Karnataka v. Umadevi* (3),(2006) 4 SCC 1.

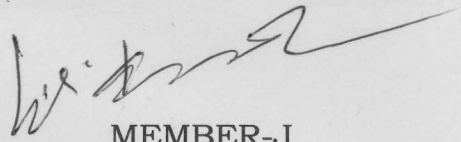
7. Thus, disengagement of the applicant is thoroughly illegal. Shri Radhey Shyam who had a grass root as EDMP has to be sent back to his original post and his substitute has to pave way for the same, as the appointment of the substitute is under the personal responsibility of the said Radhey Shyam. In any event, the said Sudhir Kumar had left the job and his name was deleted from the array of respondents vide order dated 11-04-2002.

8. In view of the above, **the OA succeeds**. Orders dated 24-11-2000 (Annexure 1) and 12-04-2001 (Annexure II) are hereby quashed and set aside. The applicant shall be deemed to have continued as Electricity Khalasi without any interruption. Respondents are directed to re-engage the applicant as Electrical Khalasi. Though the applicant would not be entitled to any wages on the basis of 'no work, no pay' for the period he had not worked i.e. from 25-11-2000 till date, for the purpose of working out seniority etc., his period of service shall count uninterruptedly from 1987 till date and any benefits accruing

on the basis of years of service would be made available to the applicant. In case the post of Electrical Khalasi has already been filled up on regular basis, the applicant shall be accommodated in some other unit where the post of Electricity Khalasi is vacant. In case, no such vacancy right now exists, the applicant shall get priority over all others in the future engagement/appointment to the post of Electrical Khalasi. Order on reinstatement and re-engagement of the applicant shall be passed by the competent authority, within a period of four months from the date of communication of this order. In case of non-availability of vacancy immediately, the individual shall be suitably informed within the aforesaid period. No cost.



MEMBER-A



MEMBER-J