

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 1189 of 2001

Wednesday this the 4th day of ~~May~~ June, 2008

**Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. K.S. Menon, Member (A)**

Ramanand Tiwari, S/o Shri Brhma Deo Tiwari, R/o Village and Post
Mohammadpur, Tahsil Belthra Road, District Ballia.

Applicant

By Advocate Sri Avnish Tripathi

Versus

1. Union of India through its Secretary, Department of Post, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Superintendent of Post Offices, Ballia Division, Ballia.
3. Sub Divisional Inspector of Post Offices, North Sub Division, Belthra Road, Ballia.

Respondents

By Advocate Sri V.V. Mishra

O R D E R

By K.S. Menon, Member (A)

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 against the action of the respondents in not regularizing the applicant, who was initially appointed as EDDA/EDMC, Mohammadpur, Belthra Road, Ballia, on the post of Extra Departmental Branch Post Master (EDBPM for short) in the same office, which post the applicant is holding as additional charge, since 01.09.2001 on the retirement of the regular incumbent Sri Namoona Tiwari. The applicant states the salary of E.D.B.P.M. is also being denied to him despite functioning as one.

2. The applicant was appointed as Extra Departmental Delivery Agent (EDDA)/Extra Departmental Mail Carrier (EDMC), at Mohammadpur, Belthra Road, Ballia, after a due process of selection on 01.01.1992 (Annexure A-1 to the O.A.) The post of E.D.B.P.M. in the same office fell vacant on the retirement of the regular incumbent Sri Namoona Tiwari on 30.06.2001. The respondents appointed the

applicant to work as EDBPM in the aforesaid vacancy on temporary basis on 01.09.2001 (Annexure A-2 to the OA). The applicant submitted a representation dated 20.09.2001 to the respondents seeking regularisation on the said post of EDBPM and for payment of salary as admissible to an EDBPM till a regular incumbent is posted (Annexure A-5 to the O.A.), on the ground that he was a working ED Agent, as provided for in the EDAs (Conduct and Service Rules) 1964, which states that: -

"(i) When an ED post falls vacant in the same office or in any office in the same place and if one of the Existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange provided he is suitable for the other post and fulfils all the required conditions."

In view of the above provision, the applicant holds that he should have been appointed to the post of EDBPM on a regular basis on the basis of his application dated 20.09.2001. It is also his grievance that though his case for payment of EDBPM's salary was recommended and sent to respondent No. 2, but respondent No. 2 did not approve the same and on the other hand ordered that the salary of EDDA/EDMC be paid to the applicant (Annexure A-7 to the OA). This action the applicant holds is totally arbitrary and illegal and against the rules and in violation of Article 14 and 16 of the Constitution of India. Being aggrieved by the action of the respondents, he filed a representation dated 20.09.2001 followed by a reminder on 03.10.2001 and then filed this O.A. on 12.10.2001. In the meantime, the respondents terminated the services of the applicant vide their order dated 26.09.2001. The applicant then filed an M.A. No. 4839 of 2001 praying that the operation of Order dated 26.09.2001 passed by respondent No. 2 be stayed. This M.A. was dismissed vide Order dated 19.11.2001 as not pressed with liberty to the applicant to file a fresh O.A. Accordingly, the applicant filed O.A. No. 1305 of 2001. This O.A. was disposed off by this Tribunal vide its Order dated 28.08.2002 by which it set aside the impugned order dated 26.09.2001, the relevant part of the Order is as under: -

"4. The present O.A. has been filed on account of the observation contained in the inspection note of Superintendent of Post Offices, Ballia to the effect that the temporary arrangement made on the post of E.D.B.P.M. should be terminated and the previous arrangement



should be restored in order to implement the court's order. This situation has now changed with the disposal of the application of Smt. Shail Tripathi (O.A. No. 745 of 2001). The applicant in the present O.A. was given charge of the post w.e.f. 01.09.2001 as E.D.B.P.M. and the effect of stay order was over with the taking over of charge by the applicant. Therefore, this order is misconceived and set aside.

5. The applicant's claim for being considered as an E.D. Agent for the post of E.D.B.P.M., Mohammadpur requires to be considered as per rules. The respondents are directed to consider the case of the applicant as per rules within a period of 2 months from the date of receipt of a copy of this order. There shall be no order as to costs."

In terms of the aforesaid order setting aside the termination order dated 26.09.2001, the applicant's case reverts to the status quo ante position i.e. he continues in the post of EDBPM as on 26.09.2001 and his case was to be considered for regular appointment as EDBPM as per rules within two months of the aforesaid Tribunal's Order i.e. by October 2002. The applicant has relied on the following Judgment, which he states covers his case squarely: -

"Central Administrative Tribunal, Allahabad O.A. No. 1284 of 2002 decided on 06.03.2003 Surya Mani Tripathi alongwith O.A. No. 1237 of 2004 decided on 11.11.2005"

3. The respondents on their part have refuted the averments of the applicant. They do not dispute the fact that the applicant was initially appointed as EDDA/EDMC on 01.01.1992 and subsequently when the post of EDBPM fell vacant on 30.06.2001, he was appointed temporarily to the said post on 01.09.2001. Subsequently when his appointment was approved by the Superintendent of Post Offices, Ballia his salary from date of appointment i.e. 01.09.2001 was paid to him with back wages on 05.04.2002. The respondents further submit that a new EDBPM has assumed charge on 12.03.2003 and as the vacancy has been filled up, the applicant is not eligible for the said post and continues to work on his old post of EDDA/EDMC, for which he is being paid his salary. The applicant's demand for higher salary for the post of EDBPM is therefore misconceived as he is not entitled for the same in accordance with rules. They therefore submit that the O.A. is without merit and is liable to be dismissed. The applicant has not submitted any rejoined to the counter affidavit.



4. Heard Sri Avnish Tripathi, learned counsel for the applicant and Sri V.V. Mishra, learned counsel for the respondents and perused the pleadings on record.

5. The short question to be decided in this case is whether the applicant is entitled for appointment as EDBPM in an existing vacancy without going through the process of selection, as he is working as EDDA/ EDMC in the same Branch Post Office. His case would be covered by the. D.G., Posts, Letter No. 43-2T/85-Pen(EDC & Trg.), dated 12.09.1988 and relevant extract of the aforesaid letter is cited below: -

"(i) When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange provided he is suitable for the other post and fulfils all the required conditions."

From the pleadings on record, it is not certain whether on the basis of this Tribunal's Order dated 28.08.2002 the respondents restored the applicant to the post of EDBPM on 26.09.2001 i.e. the day his termination order was issued. Respondents have also not clearly stated whether the applicant whose salary and back wages were paid on 05.04.2002 continued to be paid till the date a new Branch Post Master took charge on 12.03.2003.

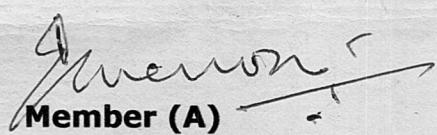
6. On the issue of appointment of the new Branch Post Master, both parties have not provided the details about the selection process adopted and whether the applicant's case was also considered along with other applicants which ultimately led to the selection of one Sri S.C. Chauhan as Branch Post Master, Mohammadpur, Ballia. The pleadings are sketchy with repetitions and devoid of relevant details. Copies of the relevant D.G. (Posts) letter on the subject have also not been annexed.

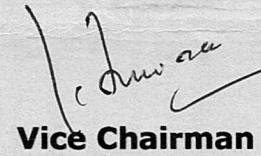
7. In view of the above and to meet the ends of justice, we direct the respondents to consider the case of the applicant as per D.G. (Posts) instructions and in terms of this Tribunal's Order dated 20.08.2002 for appointment as EDBPM ~~at Mohammadpur~~ if he is otherwise eligible in accordance with rules. Since Sri S.C. Chauhan has been appointed on regular basis as the Branch Post Master at



Mohammadpur and has been functioning as such for the past five years, it is not our intention that he be disturbed. It should also be ensured that the applicant is paid salary of EDBPM for the period he actually held the charge.

8. The O.A. is disposed of with the above directions. No costs.


Member (A)


Vice Chairman

/M.M/