

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 08th day of April 2002

Original Application no. 1215 of 2001.

Hon'ble Maj Gen K.K. Srivastava, Member (A)  
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Ajay Kumar Pandey, S/o Sri R.K. Pandey,  
R/o Vill, Post Office and Police Station,  
Urwa Bazar, Gorakhpur.  
Presently working as Substitute/Privisional  
Extra Departmental Mail Peon (EDMP)  
at the Sub-post Office, Urwa Bazar,  
Gorakhpur.

By Advocate Shri Shyamal Barain

Applicant

Versus

1. The Union of India, through the Secretary, Ministry of Communications, Department of Posts, New Delhi.
2. The Sub-Divisional Inspector, Post Office, Urwa Bazar, Gorakhpur (Sub-Division 273407).
3. The Sub-Post Master, Urwa Bazar, Gorakhpur.

By Advocate Shri R.C. Joshi

Respondents

O R D E R (Oral)

By Hon'ble Maj. Gen. K.K. Srivastava, A.M.

By this OA filed under section 19 of the AT Act, 1985, the applicant has challenged the termination order dated 13.10.2001 issued by respondent no. 2 (Ann.-1) and has prayed that the impugned order 13.10.2001 be quashed and respondents be directed not to dispense with the services of the <sup>Extra Departmental Mail Peon (in short EDMP)</sup> applicant as substitute <sup>EDMP</sup> Urwa Bazar sub post Office (in short so).

2. The facts giving rise to this OA are that the

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applicant was working as a substitute/provisional EDMP at SO Urwa Bazar Gorakhpur. The applicant's father Sri Ram Karan Pandey was a regularly appointed EDMP at Urwa Bazar SO Gorakhpur. The applicant has frequently rendered service as substitute EDMP in place of his father when ever he proceeded on leave. The applicant's father Sri R.K. Pandey retired from the post of EDMP on 30.6.2000. The charge of the EDMP was taken over by one Sri Mohan Prasad who was working as Extra Departmental Delivery Agent (in short EDDA)/Mail Carrier (in short MC) at Branch Post Office (in short BO) Gajpur and in place of Sri Mohan Prasad, the applicant was employed as substitute EDDA/MC w.e.f. 30.6.2000. By order dated 17.10.2000 issued by respondent no. 2 the applicant was shifted from Gajpur BO to Urwa Bazar SO to work as substitute EDMP and the applicant took over charge of EDMP Urwa Bazar SO on 17.10.2000. Sri Mohan Prasad on the same day took over the charge of EDDA/MC at Gajpur BO after he was relieved from Urwa Bazar SO. The applicant proceeded on medical leave on 15.10.2001. On 16.10.2001 he came to know that his services as substitute EDMP were terminated by the impugned order dated 13.10.2001.

3. Sri S Narain inviting our attention to the said impugned order dated 13.10.2001 submitted that the order of respondent no. 2 is arbitrary and illegal. The ground for the termination taken by the respondents no. 2 is merely on unfounded apprehension that if the applicant was allowed to continue working on the said post he might stake his claim for appointment/absorption in a court of law. Sri S Narain further submitted that respondent no. 2 ought to have given a show cause before the services were terminated. The action of the respondent no. 2 is violative

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of principles of natural justice.

4. Resisting the claim of the applicant Sri G.R. Gupta learned counsel for the respondents argued that the applicant was working purely as a substitute and has no right to continue on the said post. The respondent no. 2 is well within his legal rights to terminate the services of the applicant within any show cause. At this point the learned counsel for the applicant Sri S. Narain argued that the applicant is not claiming any right for regularisation and since there is a clear vacancy he cannot be substituted by another substitute.

5. We have considered the submission of learned counsel for the parties and perused records. We have no hesitation to point out that the action of respondent no. 2 suffers from error of law. The apprehension that if the applicant continued, legal right may accrued to him and, therefore, the applicant's service should be terminated, is not valid ground in the eyes of law. The legal position is well settled that a substitute cannot be substituted by another substitute, he can only be removed either of misconduct by following the procedure as per law or else irregular appointment is made. <sup>in this case</sup> neither of the two conditions <sup>is there</sup> ~~are their~~ <sup>in this case</sup> in this case. The applicant cannot be held responsible for the failure on the part of the respondents who have failed in filling up the vacancy on a regular basis and, therefore, the respondents have no legal right to terminate the services of the applicant. The impugned order is arbitrary and illegal and liable to be quashed.

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6. In view of our aforesaid observation the OA is allowed. The order dated 13.10.2001 is quashed. The respondent no. 2 is directed to re-engage the applicant as EDMP, Urwa Bazar, SO, Gorakhpur within one week from the date of communication of this order. He shall continue on the post and shall be removed only in accordance with law.

7. There shall be no order as to costs.

  
Member (J)

  
Member (A)

/pc/