

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

(This the 22 day of 4 2010)

Present

Hon'ble Mr. A.K. Gaur, Member-J
Hon'ble Mr. S. N. Shukla, Member-A.

Original Application No.696 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

Vivek Kumar Sharma, S/o Shri Mahesh Chand Sharma,
R/o Village- Jargawa, P.S. Ramghat, Bulandshahr,
District- Bulandshahr.

..Applicant.

By Advocate : Shri Satish Mandhyan

V E R S U S

1. Union of India through Secretary, Department of Post, New Delhi.
2. Senior Superintendent of Post Offices, Department of Post, Bulandshahr.
3. Assistant Superintendent of Post Offices, Department of Post, Khurja, Khurja Sub-Division, District- Khurja.

...Respondents

By Advocate : Shri R.K. Srivastava

O R D E R

(Delivered by : Hon'ble Mr. A.K. Gaur, Member-J

The applicant through this O.A filed under section 19 of Administrative Tribunals Act, 1985 has prayed for issuance of a direction to the respondents to allow him to continue on the post of G.D.S, Negalia, Udai Bhan coupled with prayer for a direction to consider his case for regularization as G.D.S Negalia, Udai Bhan.

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2. The capsulated facts of the case are that the applicant was appointed as Gramin Dak Sewak (G.D.S for short) provisionally vide order dated 28.08.2003 (Annexure -4 of O.A) and had worked upto 28.02.2004. Thereafter vide order dated 16.09.2003 (Annexure-5 of O.A) the applicant was allowed to continue as G.D.S till further orders. In the meanwhile the services of the applicant as GDS was dispensed with. Aggrieved the applicant filed representation dated NIL (Annexure-6 of O.A) followed by representation dated NIL (Annexure-8 of O.A) for taking back him in duty.

3. Learned counsel for the applicant submitted that the post of GDS, Negalia, Udai Bhan was lying vacant as a consequence of promotion of Sri Bhagwan on the post of Branch Post Master, and as such the A.S.P.O in connivance with Sri Bhagwan, terminated the engagement of the applicant without any reason and engaged his son as GDS , Negalia, Udai Bhan. Aggrieved, the applicant filed the instant Original Application on the ground that the applicant was engaged as GDS Substitute against vacant post, therefore, according to D.G. Posts, New Delhi Letter No. 18-34/92 E.D & Trg. Dated 25.11.1993, which provided that "E.D Substitutes allowed to continue for the period exceeding 180 days as a matter of Rule, this will legitimate the claim of all E.D. Agents for regularization for their services as E.D. Agent", the applicant is entitled to be appointed on any vacant post of Gramin Dak Sewak.

4. On notice, the respondents filed Counter Affidavit. Learned counsel for the respondents submitted that as per Circular of Directorate General (P), New Delhi dated 14.08.2003

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(Annexure CA-4), there was complete ban on recruitment in G.D.S cadre, therefore the appointment of the applicant as G.D.S M.D provisionally was illegal. Learned counsel for the respondents further submitted that the applicant has not completed three years continuous service, therefore, he is also not entitled for any alternative appointment as contained in Directorate's Letter dated 30.12.1999 /Annexure CA-7. It has further been submitted by the learned counsel for the respondents that the applicant never worked as GDS in the regular capacity but had functioned as a substitute on the risk and responsibility of regular employee, which does not give any right to the applicant to claim for his regularization in G.D.S Cadre.

5. Applicant has filed rejoinder affidavit reiterating the facts stated in the original application.

6. We have heard rival contentions and perused the pleadings as well as the written submissions filed by the counsel for applicant.

7. For convenience, we would like to reproduce the relevant paragraph of the Circular dated 30.12.1999/Annexure CA-7 of Counter Affidavit which reads:

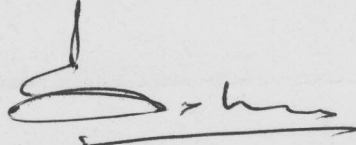
"Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' continuous approved service. In such cases, their names should be include in the waiting list of ED Agents discharged

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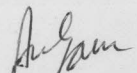
from service, prescribed in D.G, P &T, Letter No. 43-4/77-Pen dated 23.02.1979 .”

8. In the present case, although the applicant was appointed provisionally but had not completed three years' continuous approved service, as contemplated in Circular dated 30.12.1999, quoted above. We have also noticed that the applicant was appointed as GDS provisionally vide order dated 28.08.2003/Annexure-4 of O.A, whereas, as per Circular of Directorate General (P), New Delhi dated 14.08.2003 (Annexure CA-4), there was already complete ban on recruitment in G.D.S cadre. Therefore, the very appointment of the applicant itself was against the Circular dated 14.08.2003. The provisional appointment of the applicant was also not made after due approval of the competent authority.

9. In view of the observations made above, we do not find any merit in the O.A. and it is dismissed accordingly with no order as to costs.



MEMBER- A.



MEMBER-J

/Anand/