

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.702 OF 2004

ALLAHABAD THIS THE 14th DAY OF DECEMBER 2006

HON'BLE MR. K. ELANGO, MEMBER-J
HON'BLE MR. M. JAYARAMAN, MEMBER-A

Subha Yadav, S/o Sri Faujdar Yadav, R/o Village
Ahirauli, Post Nathhupur, Via Madhuban, District
Mau.

.....Applicant

(By Advocate Shri D.B. Yadav)

V E R S U S

1. Union of India, through its Secretary
Department of the Postal Service, New Delhi.
2. Assistant Director, Postal Service Gorakhpur
Region, Gorakhpur.
3. Sr. Superintendent of Post Azamgarh Division,
Azamgarh.
4. Assistant Superintendent of Post Office Mau,
Sub Division, Mau.

.....Respondents

(By Advocate: Sri N.C. Nishad)

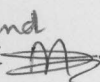
ORDER


BY M. JAYARAMAN, MEMBER-A

We have heard Sri D.B. Yadav, learned counsel
for the applicant and Sri N.C. Nishad, learned
counsel for respondents.



2. The applicant has come up before this Tribunal being aggrieved by the impugned order dated 19.2.2002 passed by the respondent no.2 namely Assistant Director, Postal Service Gorakhpur Region, Gorakhpur regarding inability to appoint the applicant on the post of EDMP on regular basis.

3. The applicant has stated that he was appointed to the post of EDMP Jajauli, District Mau, vide order dated 13.5.1987 which post he served till September, 1990 when he was removed from the post. Since he had served for more than 3 years, he could not have been removed suddenly, but only after due notice as provided under Rule 6 of ED (Conduct & Services) Rules (hereinafter referred to as Rules). He submitted an appeal to the Director, Postal Services, Gorakhpur, who vide letter dated 30.5.1991 directed his consideration in future employment if the applicant fulfilled the eligibility condition for appointment, which was communicated by the ASPO, Mau Sub-Division, Mau vide his letter dated 5.6.1991. However, since the applicant was not appointed, but an advertisement was issued calling applications, the applicant filed O.A. bearing no. 897 of 2000 for quashing the advertisement and for appointing him on regular basis. By order dated 17.8.2000, the said O.A. was dismissed on the ^{ground} ~~real~~  that the applicant had held the post as Substitute and so he could not be appointed on regular basis. Subsequently, the applicant filed another O.A.



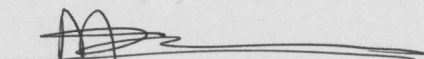
bearing no. 588 of 2001 by saying that his representation before the Assistant Superintendent of Post Offices, Mau Sub-Division, Mau was still pending. By order dated 10.7.2001, the Tribunal disposed of the O.A. by giving direction to the respondent no.2 in that O.A. namely Asstt. Director, Postal Services, Gorakhpur Region, Gorakhpur to consider and decide the representation of the applicant by a reasoned order within a month from the date, ^a ~~of~~ copy of the order was filed before him. In pursuance of the above directions, the impugned order dated 19.2.2002 has been passed rejecting the applicant's case which has been assailed in the present O.A.

4. The main plea of the applicant before us is that he was appointed as EDMP, Branch Post Office Jajauli, District Mau and that he worked 3 ½ years continuously and so he could not be terminated without following the procedure. In support of his case, the applicant has cited Rule 6 of the Rules, which reads as under:

"6. Termination of Service

- (a) The services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;
- (b) The period of such notice be one month;

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing



them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month."

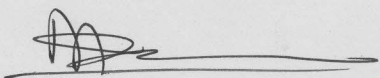
5. The applicant's counsel has also drawn our attention to Rule 5 of the Rules and D.G. Instructions dated 24.2.1970 as amended subsequently to say that where the E.D. agent is on sanctioned leave, he should arrange for his work to be carried out by a substitute who should be approved by the authority competent to sanction the leave and also approval is in writing. Accordingly, he submits that the impugned order issued to him did not specify that he was substitute as provided for the above. With reference to the impugned order, his plea is that he was never appointed as substitute as explained above, and in any case no notice was given to him as required under Rules before termination.

6. Opposing the plea of the applicant, the respondents have justified the issue of impugned order on the plea that though the Director Postal Services, Gorakhpur Region, Gorakhpur noted in his letter dated 30.5.1991 for consideration of the applicant for future employment if he fulfilled the eligibility condition and communicated the same by the ASPO, Mau Sub-Division, Mau by his letter dated 5.6.91 and accordingly the applicant was asked to submit his application with documents for appointment as GDS MP/MC, Tajopur vide letter dated 23.5.94, the applicant never submitted any application nor was his name sponsored by the Local



Employment Exchange. It is further stated that 14 candidates had been sponsored who had higher educational qualification namely High School passed and above, whereas the applicant was only 7th standard passed and accordingly the applicant was not selected. It is further stated by the respondents that in pursuance of the Tribunal's order dated 10.7.2001 the representation of the applicant was decided by the Director, Postal Services, Gorakhpur vide letter dated 19.2.2002 since there is no provision to appoint a substitute without following the procedure of appointment.

7. We are afraid, we cannot agree with the averments made by the respondents, as noted above, it is seen that the Tribunal in its order dated 10.7.2001 passed in O.A. no. 588 of 2001 filed by the applicant had given a clear direction to the respondent no.2 in that O.A. namely Assistant Director, Postal Services, Gorakhpur to decide the representation of the applicant by a reasoned order. In pursuance of the above direction, the impugned order has been passed. However, as pointed out by the applicant, we find that the appointment order issued to the applicant vide order dated 13.5.1987 does not say that he was posted only as a substitute during the leave period of the incumbent. In fact, the appointment order dated 13.5.1987 clearly states that ^{''}upon appointment of Shri Shyam Deo, EDMP, Jajauli as FDR, Jajauli which is approved by SSP,



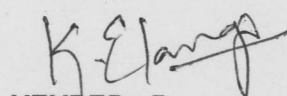
Azamgarh, the post of EDMP fallen vacant. Therefore, Sri Subha Yadav is hereby ordered to work as EDMP, Jajauli on the own risk and responsibility so with immediate effect. ~~It is, therefore, clear that the~~ above was not as a substitute as provided under Rule 5 of the Rules relied upon by the applicant. The respondents had not said anything about the aforementioned submissions of the applicant in the Counter affidavit.

8. In the light of the above, we are of the view that the applicant ought to have been given notice before termination since he had worked for more than 3 years as EDMP, Jajuli and so we consider it appropriate to issue suitable directions to the respondents to consider the applicant's case for regular appointment.

9. Accordingly, the O.A. succeeds and the impugned order dated 19.2.2002 is hereby quashed. We hereby direct the respondents to consider the applicant's case for regular appointment in accordance with Rules in the light of our observations made hereinabove. No costs.



MEMBER-A



MEMBER-J

GIRISH/-