

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 29th day of October 2007

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Original Application No. 1053 of 2004

Chandra Kant Mani Tripathi, S/o Sri J.M. Tripathi,
R/o Village and Post Deopur, Deoria Khas, Distt:
Deoria.

. . . Applicant

By Adv: Sri J.N. Tripathi & Sri H.P. Mishra

V E R S U S

1. Union of India through the Secretary, Ministry of Communication, Department of Posts and Telegraph, New Delhi.
2. Post Master General, Gorakhpur Circle, Gorakhpur.
3. Senior Superintendent, Head Post Office, Deoria.
4. Inspector, Post Office Paschimi, Deoria.
5. Senior Post Master Deoria.
6. Up-Dak Pal (GDS), Paikauli, Mahraj, Deoria.

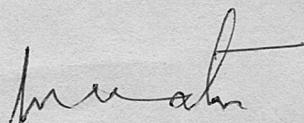
. . . Respondents

By Adv: Sri S. Singh

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

The order impugned in this OA is the one passed by the respondents on 20.08.2004 rejecting the representation of the applicant for allowing him to work as GDS employee in pursuance of the Tribunal's order dated 25.05.2004 in OA No. 1075/03. It has



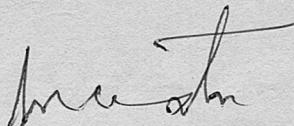
been stated by the applicant that he started working with the respondents as GDS Mail Runner on 26.07.2002. As he was not being allowed to continue in the job and was not being regularized he approached the Tribunal with OA 1075/03. The OA was disposed of by the Tribunal with the following order:

".....The applicants have acquired no right to hold ~~the post~~ in the circumstances, no interference in the matter is called for. It is however, provided that this order is without prejudice to the right of the applicants to seek alternate appointment or regularization under any scheme or rules. In case, the applicants file any representation in this connection, the same shall be considered and disposed of in accordance with law as early as possible preferably within a period of two months from the date of receipt of the representation. It is further made clear that pending decision of the representation, the applicants may be allowed to continue if they have not been disengaged by now."

2. After rejection of the representation of the applicant the present OA was filed afresh by the applicant, and on consideration of the same the Tribunal had issued the following direction:

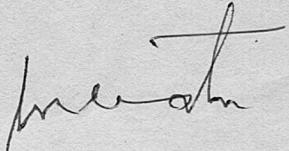
"In case no regular selected candidate is available and the post is still vacant the applicant shall be allowed to continue on the post within a period 14 days."

3. The fact which as been stated by the applicant very briefly is that the respondents issued a notification for selection of GDSMR at Paikauli Mehraj on 21.08.2002. After applications were issued the respondents decided not to go ahead with the selection. As an ad-hoc arrangement they directed the applicant to take over the work of the Mail Runner in a temporary measure under the



responsibility of Sri Amar Nath Singh, Supervisor of the Post Office. The engagement was for a period of 90 days. It was stated in the engagement letter that it would be terminated on completion of 90 days. In the meantime the applicant filed OA No. 1075/03 on which the Tribunal's decision has been already cited. The respondents, however says that in compliance of the direction of the Tribunal the applicant was allowed to continue to work as Mail Runner on ad-hoc basis until disposal of the matter.

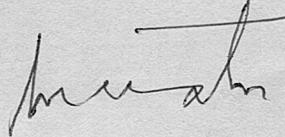
4. The respondents, however, have strongly refuted the claim of the applicant to the post. They say that it was merely a temporary and ad-hoc arrangement which was to be terminated within a short time. The respondents could not finalize the selection against the notification dated 21.08.2002 due to administrative delay. But terms of the ad-hoc appointment would show that no right was conferred upon the applicant. The respondents have strongly refuted the claim of the applicant that he has been working since July 2002 almost continuously as GDSMR, and although he was not regularly appointed, he has worked for long, and his engagement can be termed as provisional appointment. The respondents have stated that for about 3 years the applicant has been allowed to continue in his ad-hoc capacity because of the stay order issued by the Tribunal in this OA. Therefore, it cannot be

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accepted that they have allowed him to work as a provisionally appointed person and that they should give him benefit out of that.

5. The applicant's counsel stated during the argument that decision of OA 85/06 recently decided by this Tribunal should apply in the case squarely. In OA 85/06 the circumstances of the applicant was similar and as in the case of the present applicant, the applicants in OA 85/06 also perform the work as GDS staff for a long period, and in reorganization of that the Tribunal gave a favourable judgment. The respondents have however stated that the judgment of this Tribunal in OA 85/06 will not apply to this OA for the reason that they appointed him only for a period of 90 days. They were about to make a regular selection, but were not able to do that due to pending OA and the consequent interim order. The respondents tried their best to vacate the stay order dated 26.10.2004 issued by this Tribunal in this OA. But despite their request for quick disposal of the same it could not be done.

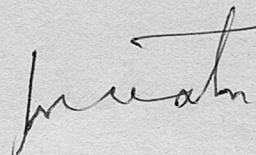
6. Referring to the decision of the Tribunal in OA 1075/03 the respondents have stated that the Tribunal's order was clear that the applicant had acquired no right to hold the post and so no interference in the matter was called for. Inspite of such clear decision and inspite of definite

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action by the respondents in compliance with the direction of the Tribunal, this matter lingers and the applicant continues to work in the post due to reasons beyond control of the respondents. However, as already observed by the Tribunal no right is acquired to the applicant.

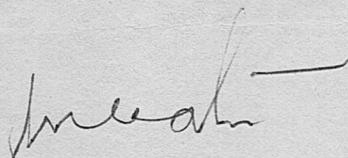
7. The respondents have vehemently objected to the request of the applicant for what they term a back door entry. He obviously, could not take advantage of the inability of the respondents to complete the selection in the year 2002 for which he was allowed to be engaged only in a temporary measure for 90 days. What happened subsequently was beyond the control of the respondents. The respondents cited the judgment of the Hon'ble Supreme Court in case Uma Devi Vs. State of Karnataka saying that the Apex Court has ruled that regularization of any irregular/ad-hoc appointment should be seriously discouraged.

8. Having heard the rival submission and after going through the written submission we are of the view that the respondents arguments are tenable. The applicant's plea that he has worked for over 04 years almost continuously and therefore he should be taken as a provisionally appointed candidate and be considered for regularization is not tenable. The respondents did take some action for a regular

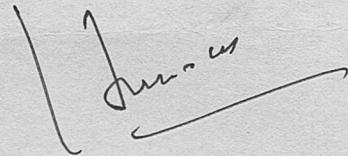
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selection to the post, however, they were not able to proceed further in the matter due to circumstances beyond their control. We have also applied our mind to the point made by the applicant regarding applicability of the decision of this Tribunal in OA 85/06. But we are not able to agree with the learned counsel for the applicant for the reason that the present applicant continued to work as ad-hoc GDS staff under the interim orders of the Tribunal which was not the case of the applicant in OA 85/06.

9. For these reasons we do not find any merit in this OA which is dismissed with no order as to costs.



Member (A)



Vice-Chairman

/pc/