

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No.1145/2005
This the 15th day of November 2006.

HON'BLE DR. K.B.S. RAJAN, MEMBER (J)
HON'BLE MR. A.K. SINGH, MEMBER (A)

Madan Gopal Singh son of Sri Chhotey Singh, R/o Village and Post Sedha, District Bijnor.

... Applicant.

By Advocate:- Shri B.N. Singh.

Versus.

1. Union of India through its Secretary, Ministry of Communication (P&T) Dak Bhawan, Sansad Marg, New Delhi.
2. The Superintendent of Post Offices, Bijnor Division, Bijnor.

... Respondents.

By Advocate: Shri R.C. Shukla for Shri S. Singh.

Order (Oral)

By DR. K.B.S. RAJAN, MEMBER (J)

The facts of the case not in dispute, the same obviate debate. It will therefore be appropriate to take the facts as given in the preliminary submissions in the counter affidavit, which reads as under:

"That the applicant was appointed as BPM Sadha (Nithaur) provisionally on 17.3.1987 vice Sri Virendra Kumar, who was placed under Put Off duty. It is further stated that Shri Madan Gopal (applicant) was clearly informed in the appointment letter that if Shri Virendra Kumar (regular BPM) comes back on his duty by virtue of departmental action, he will be removed from the said post of EDBPM, Sadha (Nithaur) in compliance of the order of this Hon'ble Tribunal in O.A. No.178 of 1989 and as per condition mentioned in the appointment letter dated 17.3.1987, the applicant was relieved from the post of BPM Sadha (Nihtaur), District Bijnor.

That it is pertinent to mention here that on relieve from the post of BPM, Sadha Sri Madan Gopal (applicant filed O.A. No.927 of 2000 in re. Madan Gopal Vs. Union of India & Ors, which was dismissed at admission stage on 1.8.2000 by this Hon'ble Tribunal with the observation that keeping in view long tenure of service said to be more than 13 years of the applicant, the department may consider his case sympathetically by providing alternative job.

That in compliance of the order of this Hon'ble Tribunal dated 1.8.2000, the case of the applicant was considered sympathetically by the department offering him appointment of GDS BPM, Bhikawala BO on 6.7.2001, but he did not accept it and requested that Bhikawala BO is 50 Km. away from his native village,

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therefore, he may be posted on the vacant post of EDBPM, Sikri Buzurg (Nithaur), District Bijnor. The request of the applicant was again considered very sympathetically and he was posted as EDBPM Sikri Buzurg (Nihtaur) on 23/25.10.2001 and now he is working as EDBPM Sikri Buzurg since 7.11.2001 (A.N.)."

2. The question for consideration is whether the applicant is entitled to the benefits of past service of 13 years for the purposes of counting for his eligibility into the appearance in the examination. The applicant relied upon the relevant rules (vide Annexure CA-3), the same reads as under:

"(8). How seniority of EDAs to be determined for purpose of appearing in the departmental examination. With reference to the Directorate's Letter of even number , dated 20.3.1979, doubts have been raised as to how the seniority of EDAs are to be determined for the purpose of appearing in the departmental examination of Class IV/ Postman . After examining the various aspects, the following decision has been taken:-

(iii). The past service of an EDA, in case of his discharge from service on up gradation or abolition of the post and who was offered alternative appointment within one year, will be counted from the date of his initial appointment (not continuous appointment). The interruption may be ignored and treated automatically condoned. This concession will be applicable only if the EDA was regularly appointed in a particular post (and not worked as substitute for some time and got regular appointment later)."

3. Arguments were heard and documents perused. The counsel for the applicant submitted that, in an identical case of one Shri Om Pal the respondents have taken in to consideration the previous services also vide Annexure-6. However, on perusal of Annexure-6, it is seen that the case does not reflect the situation as contended by the applicant.

4. The applicant has also invited the attention to para-9 of the O.A. in respect of another case wherein , the respondents have taken into account the provisional period of service. This has been replied to by the respondents stating that the previous appointment of the individual named in para-9 was not one against the post wherein some body was already working. The view of the respondents cannot be accepted as appointment in the place of some one else is a substitute appointment and provisional appointment are always against the clear vacancy . In the instant case for 13 years the applicant had served against the clear vacancy and the incumbent who has vacated the position, no doubt, stayed a come, but at the Court's order. It is trite law that working on the clear vacancy

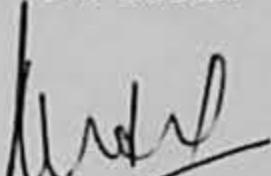
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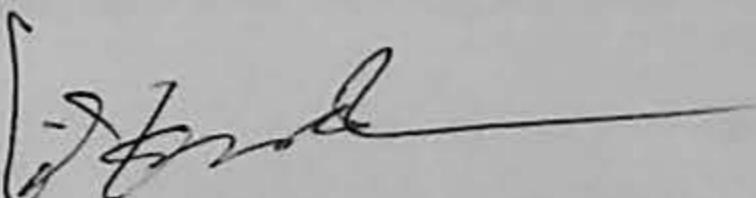
for 12 months is to be treated as regular vacancy vide decision of the Apex Court in the case of M.S. Mahal Vs. Union of India & Others (-----).

5. Though, the rule relating to taking into account the service rendered vide Clause-3 of C.A.-3 does not directly apply to the facts of the case, the fact remains that the applicant has served for 13 years and as such notwithstanding his service being stamped as provisional, since the claim of the applicant is to consider this period for a limited purpose of appearing in the examination, it is appropriate that the Respondent No.1 considers the case of the applicant for necessary relaxation of the rules if need be so that the applicant may be permitted to sit in the examination.

6. Accordingly, the O.A. is disposed of with a direction to the Respondent N.1 to consider the case of the applicant for relaxation of the rules relating to counting of service for the purposes of sitting in the examination for any Group-'D' post and pass appropriate order in this regard consideration warranting relaxation in this case, viz 13 years of continuous service and alternative employment granted to the applicant, may be taken into account while taking decision in the case. The respondents may take decision preferably within a period of 2 months from the date of communication of a copy of this order. The past service of the applicant for 13 years shall not to be taken as regular for any other purposes save in respect of his entitlement to appear in the examination.

7. No costs.


(A.K. SINGH)
MEMBER (A)


(K.B.S. RAJAN)
MEMBER (J)

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