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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
THIS THE 7<sup>TH</sup> DAY OF APRIL, 2005  
Original Application No. 369 of 2005**

CORAM:

HON.MR.V.K.MAJOTRA, VICE CHAIRMAN  
HON.MR.A.K.BHATNAGAR, MEMBER(J)

Kamala Ram Yadav, aged about 46  
Years, S/o Shri Inroo Ram, Resident  
of village & Post Rasoolpur, district  
Azamgarh.

.. Applicant

(By Adv: Shri Rakesh Verma)

**Versus**

1. Union of India through the Secretary  
Ministry of Communication (Department  
of Posts), North Block, New Delhi.
2. The Senior Superintendent of Post Offices,  
Azamgarh Division,  
Azamgarh- 276001.

.. Respondents

(By Adv: Shri R.C.Shukla)

**Order(Oral)**

**HON.MR.V.K.MAJOTRA,V.C.**

Applicant had been appointed vide Annexure A-1 dated 12.2.1982 as E.D.B.P.M Rasoolpur on provisional basis till the disciplinary proceedings against Shri Roop Narain Yadav, who had been put off duty, were finally disposed of until it was finally decided not to take back him into service till regular appointment is made. Shri Roop Narain Yadav is stated to have been reinstated in service after 11 years. Thereafter the services of the applicant were sought to be terminated which became the subject matter of OA No. 126/93. This OA was decided on 4.12.1991 with a direction to the respondents "to utilize the services of the applicant as E.D.B.P.M if any vacancy exists and if no vacancy is immediately available, the applicant be given some other alternative employment. In



either case the applicant will be entitled to reckon his past services for all purposes including seniority and that he shall be deemed to continue in service without any break". It is pointed out that Shri Roop Narain Yadav after reinstatement has now retired on attaining superannuation on account of which the said vacancy has arisen and the respondents have notified the same as unreserved including applications on 31.1.05(Annexure A-3.)

Learned counsel for the applicant pointed out that applicant was provided alternative employment on the post of E.D. Runner in the same post office after Shri Roop Narain Yadav was reinstated. Applicant stated to have applied for appointment on the post vacated by Shri Roop Narain Yadav on superannuation. He further contended on the strength that applicant has worked for about 12 years and prior to that as E.D. Runner for 10 years that he is entitled to be appointed as E.D.B.P.M and that selection proceedings in pursuance of the aforesaid notification should be directed to be cancelled. Learned counsel relied upon paragraph 15(iii) and paragraph 2 of Section 4 (Method of Recruitment) Swamy's Compilation of Service Rules for Postal ED Staff, 8<sup>th</sup> Edn. contending that provisional appointees as ED Agents have a preferential right for consideration for regular appointment as such. The relevant instructions are reproduced as below:-

- A   “(15) Provisional appointment of ED Agents.- It has come to the notice of this office that provisional appointments made to ED posts are being allowed to continue for indefinite periods and when regular appointments are made, the provisionally appointed persons do not readily hand over the charge. The following instructions are issued in this regard:-”-
- (i) As far as possible, provisional appointments should be avoided. Provisional appointments should not be made to fill the vacancies caused by the retirement of ED Agents. In such cases, the Appointing Authority should take action well in time before the retirement of the Incumbent ED Agent, to select a suitable successor.
  - (ii) Wherever possible, provisional appointments should be made only for specific periods. The appointed person should be given to understand that the appointment will be terminated on expiry of the specified period and that he will have no claim for regular appointment. Where a new post is opened or a new post is created or where an ED Agent dies while in service or resigns from his post and it is not possible to make regular



appointment immediately, a provisional appointment should be made for a specific period. The offer for appointment should be in the form annexed (Annexure-A).

- (iii) Where an ED Agent is put off duty pending departmental or judicial Proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalized, a provisional appointment may be made, in the form annexed (Annexure-B). It should be made clear to the provisionally appointed person that if ever It is decided to reintate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment."

Even in cases where an appointment is made to fill the vacancy caused by the dismissal/removal of an ED Agent and the dismissed/removed employee has not exhausted all channels of appeal, the appointment should only be provisional. The offer for appointment should be in the form annexed (Annexure-B).

2. 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 included in the waiting list of ED Agents discharged from service, prescribed in D.G., P. & T., Letter No. 43-4/77-pen., dated 23.2.1979".

(D.G., P. & T., Letter No. 43-4/77-Pen., dated the 18<sup>th</sup> May, 1979 and Cir. No. 19-34/99-ED & Trg., dated the 30<sup>th</sup> December, 1999".

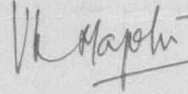
We have carefully gone through these instructions. They do not lay down that ED Agents appointed on provisional basis have any preferential right for regular appointment. On reinstatement of the previous incumbent against whom departmental/judicial proceedings were taken up, the provisional appointment of the appointee will be terminated and he would not have any claim to any appointment. Authorities have to make efforts to give alternative appointment to provisionally appointed ED Agents. Applicant, herein, has been provided alternative appointment on reinstatement of the earlier incumbent on finalisation of disciplinary proceedings against him. Authorities cannot be prevented under the Rules from under- taking recruitment on regular basis. Applicant has now applied in pursuance of notification for filling up the vacant post which has become available on superannuation of the previous incumbent.

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The rules do not provide for any preferential treatment to the applicant. The OA is, therefore dismissed in limine.



MEMBER(J)



7.4.05

VICE CHAIRMAN

Dated: 7<sup>th</sup> April ,2005.  
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