

①  
RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD**

**ORIGINAL APPLICATION NO.473 OF 2005**

ALLAHABAD THIS THE 08<sup>th</sup> DAY OF Feb 2006

**HON'BLE MR. K.B.S. RAJAN, MEMBER-J**  
**HON'BLE MR. A. K. SINGH, MEMBER-A**

Himanshu Shekhar Chaubey,  
Aged about 25 years,  
Son of Sri Kapil Deo Chaubey,  
Resident of H.No.S-24/1-4-A,  
Tiktapur Road, Mahaveer Colony, Ardali Bazar,  
Varanasi.

. . . . . 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 Senior Supdt, of Post Offices,  
East Division, Varanasi.
3. The Assistant Supdt of Post Offices,  
City Sub Division East,  
Varanasi.

. . . . . Respondents.

(By Advocate Shri S. Singh)

**ORDER**

**HON'BLE MR. K.B.S. RAJAN, MEMBER-J**

The novel way of circumventing the order of this Tribunal has been adopted by the respondents in the case of the applicant in this O.A. Order dated 26.03.2004 clearly spelt out that a substitute will not be replaced by another substitute and, therefore, the respondents were directed to pass a

62

(2)

fresh order in accordance with law. In order to have compliance of this order, what the respondents have done, is to post one Shri chandra churna Tewari, G.D.S. from Birasanpur (Sarnath) Varanasi, who was a regular G.D.S. and in his place engaged his own son Basant Kumar Tewari as a substitute. This mischief, by the Assistant Superintendent of Post Offices, Varanasi, has been committed despite the clear cut order from the Senior Superintendent of Post Offices to the Assistant Superintendent of Post Offices vide order dated 31.05.2004.

2. Briefly the facts of the case are as under. The applicant was initially appointed as EDDA Umaraha on 06.10.2000 as a substitute. He was, however, displaced by one Shri Diwakar Pathak on 17.11.2000, who was also not a regular incumbent. The applicant challenged his disengagement by filing O.A. No.1239/03 and this Tribunal, by its order dated 26.03.2004, allowed the same. In the wake of that order, Senior Superintendent of Post Offices passed order dated 31.05.2004 that the applicant should be considered for appointment as EDDA in the absence of regular incumbent being posted. The respondent no.3, ignoring this order of the SSPO, which was passed in tune with the order of this Tribunal, engaged one Shri Chandra Churna Tewari, EDDA, Birasanpur to look after the work of EDDA, Umaraha and in his place at Birasanpur, his own son

b.



Basant Kumar Tewari was engaged. When the applicant staked his claim for his appointment conveniently, the respondents have replaced Chandra Churna Tewari by asking the Branch Post Master, Umaraha himself to look after the job of EDDA, Umaraha in addition to his own. In fact, even this arrangement was not automatic but when the applicant challenged in O.A. no. 1023/04 the engagement of Chandra Churna Tewari, vide order-dated 05.06.2004 and in his place appointed his own son by order dated 8.7.04, vide order-dated 24.09.2004, these orders were stayed by an interim order. The applicant has now come again his non-engagement to the post of EDDA on the ground that posting the Branch Post Master to look after the job of EDDA is another way of circumventing the dictum of the Apex Court pronounced in the case of State of Haryana Versus Piara Singh.

3. O.A. No.1023/04, however, came to be dismissed with liberty to the applicant to challenge the order of the respondents in appointing the Branch Post Master himself as EDDA (Additional charge).

4. Respondents have contested the O.A. According to them, provision exists for posting EDBPM to look after the work of EDDA as well.

5. Arguments were heard and documents perused. The respondents have filed Supplementary CA to the RA filed by the applicant. The applicant has

specifically brought to the notice of this Tribunal a decision of Hon'ble High Court of Allahabad dated 20.10.2005 in Civil Misc. W.P. No. 8395 of 2005 in which the Hon'ble High Court has held that a substitute cannot be replaced by another substitute. In that case, the applicant was replaced by another person on adhoc arrangement. The counsel for the applicant submits that this case is squarely covered by that judgment.

6. The only point <sup>to be</sup> decided in this case is whether the respondents acted bonafide in respect of appointment to the post of EDDA, Umaraha. First, they had replaced the applicant by way of Pathak as a substitute. When the applicant was victorious in his O.A. No.1239/03, the Senior Superintendent vide order dated 31.05.2004, clearly reflected the intent and spirit of the order of this Tribunal and passed suitable instructions to ASPO vide order dated 31.05.2004. Instead <sup>of</sup> strictly adhering to this order, respondents no.3 stultified the order of this Tribunal by engaging Chandra Churna Tewari vide order dated 05.06.2004. This individual is no doubt a regular EDDA of another Post Office. In that event, the applicant ought to have <sup>been</sup> posted in the place of Shri Chandra Churna Tewari at Birasanpur. This was not done. Instead, by order dated 08.07.2004, on the responsibility of Chandra Churna Tewari, his own son Basant Kumar Tewari was engaged

62

as EDDA, Birasanpur. This was questioned by the applicant and when this Tribunal passed a stay order restraining operation of the aforesaid two orders dated 05.06.2004 and 08.07.2004, conveniently the respondents to ensure that the applicant is not posted as EDDA, Umaraha asked the EDBPM, Umaraha to look after the function of EDDA, Umaraha also. The malafide intention of the authorities is very clear. The counsel for the respondents tried to justify in posting the EDBPM to look after the working of EDDA as well by saying that such is a prevalent rule. However, he had no answer to a pointed question <sup>as to how/</sup> ~~that~~ why this rule was not followed when Chandra Churna Tewari was posted and in his place his own son was engaged.

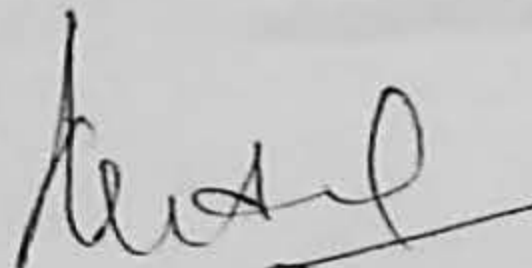
7. All the above episodes clearly go to show that the respondents are bent upon ensuring that the applicant does not succeed in getting the post of EDDA though he succeeded in this court. This kind of attitude by the respondents is deprecated. The applicant has been forced to knock at the doors of this Tribunal for the fourth time. The O.A. succeeds in toto. Order dated 16.10.2004, in so far as it asks the EDBPM to look after the job of EDDA as well, is quashed and set aside. The respondents are directed to issue necessary appointment order to the applicant as EDDA, Umaraha. As there is a clear disobedience of the order passed by the SSPO vide

th

order dated 31.05.2004 by the respondent no.3, the SSPO East Division, Varanasi is also directed to conduct an inquiry in this regard to ascertain whether the respondent no.3 has any other motive in ignoring the order dated 31.05.2004 of respondent no.2.

8. In view of the fact that the applicant was forced to rush to this court on a number of occasions the applicant is entitled to costs, which is quantified at Rs.3000/-.

9. The above direction for issuing of necessary order of payment of cost shall be complied with within a period of three months from the date of communication of this order.



Member-A



Member-J

/ns/