

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 512 of 2005

Allahabad, this the 4th day of November, 2011

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

1. Chandra Prakash Tripathi, aged about 38 years, Son of Late Paras Ram Tripathi, Resident of Village and Post Labanapar, District Basti.
2. Pramod Kumar, aged about 26 years, Son of Sri Ram Ujagar Mishra, Resident of Village Diktauli, Post Orwara, District Basti.

Applicants

By Advocate: Mr. Avnish Tripathi

Vs.

1. Union of India, through the Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. Superintendent of Post Office, Basti Division, Basti.
3. Assistant Superintendent of Post Office, Basti Division, Basti.
4. Sub Divisional Inspector of Post Office, Dumariyaganj, Siddharth Nagar.

Respondents

By Advocates: Mr. Saurabh Srivastava
Mr. N.P. Shukla

ORDER

Delivered by Hon'ble Mr. Justice S.C. Sharma, J.M.

Instant O.A. has been instituted for the following
relief (s): -

"8.1 issue a writ, order or direction in the nature of certiorari quashing the orders dated 26.4.2005 (Annexure-1 and 1-A) passed on the directions of respondent no. 2.

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8.2 issue a writ, order or direction in the nature of mandamus directing the respondents for allowing the continuation of services of the applicants.

8.3 issue a writ, order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

8.4 to award the cost of the application to the applicants."

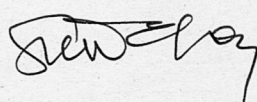
2. Pleadings of the parties may be summarized as follows: -

It has been alleged by the applicant in the O.A. that earlier O.A. No. 1187 of 2003 Chandra Prakash Tripathi Vs. Union of India and others and O.A. No. 1188 of 2003 Pramod Kumar Vs. Union of India and others were filed before the Tribunal, and the above mentioned Original Applications were decided on 29.03.2005. The above mentioned Original Applications were decided by the Tribunal in favour of the applicants. The Tribunal after considering the facts and circumstances of the case observed and made it clear that the applicant is entitled to continue to work as GDS. Whatever the benefits are available to the substitute shall be made available to the applicant in the event on taking suitable steps filling up the post of GDS/EDDA on regular basis whereas the respondent No. 3 ordered that the applicant may be kept out of service and it is against the order passed by this

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Tribunal. The orders passed by the Tribunal in the above mentioned Original Applications are being filed. As per applicants, the respondent No. 2 had not applied his mind and committed serious contempt of order of the Tribunal, and the respondents had acted in a malafide and arbitrary manner, which is against the law, and the orders passed by respondent No. 2 deserve to be quashed.

3. The respondents contested the case, filed Counter Affidavit, and denied from the allegations made in the O.A. It has been alleged that the entire departmental Branch Office Orwara is situated under the jurisdiction of Purani Basti sub post office in Basti District. In the Branch Post Office, Orwara, 3 posts were existing i.e. one post of GDS, BPM, one post of GDS MD, one post of GDS MC. The post of GDS MC fell vacant on 01.11.2002 due to retirement of Bhola Nath Tiwari. The applicant No. 1 Chandra Prakash Tripathi was engaged against the said vacant post of GDS, ML, Orwara on the basis of stop gap arrangement on risk and responsibility of Sri Ram Ujagir Mishra, GDS MD, Walterganj. The applicant was not appointed by respective appointing authority against any respective vacancy by Assistant Superintendent of Post Office (East) Sub Division, Basti on observing prescribed recruitment



rules and procedure for Gramin Dak Sewa. The Director General (Post), New Delhi under Postal Directorate letter dated 14.08.2003 (Annexure CA-1) had issued instruction that no vacant post of GDS will be filled up in any of his having two hands or more till further order and further instructions were received from higher authorities of the department, that no substitute will be allowed on any post of GDS including short term vacancies. Assistant Superintendent of Post Office (East) Sub Division, Basti issued orders on dated 09.09.2003 to the effect that Sri Indra Jeet Verma regularly appointed GDS, MD, Orwara will perform the duties of GDS ML in addition to his own duties without ignoring other substitute and as such disengaged the applicant. Against the order of the Assistant Superintendent of Post Office dated 09.09.2003, applicant filed O.A. No. 1187 of 2003, and the O.A. was decided on 23.09.2005 with a direction that "The applicant is entitled to continue to work as GDS provided his appointment is in accordance with the procedure, which should be verified from the records." On examination of records of engagement of the applicant, it was found that the applicant was never appointed by observing prescribed procedure of GDS and hence the applicant was disengaged from the post of GDS MC, Orwara on dated 26.04.2005 and this order has been challenged in this O.A., and an



interim order was passed in the O.A. and in compliance of the interim order dated 04.05.2005 applicant has been engaged and continuing on the post. It is alleged that it is against the policy and rules of the department. It is stated that the Sub Post Office, Walterganj is situated within the jurisdiction of Basti Head Post Office, Basti Division. In the Sub Post Office, Walterganj, two posts have been sanctioned for delivery work, one post of Departmental Village Postman, and another post of GDS, MD. The post of Village Postman fallen vacant w.e.f. 02.09.2002 due to transfer of Shri Radhey Shyam Verma, BPM. In stop gap arrangement, Sri Ram Ujagir Mishra regularly selected GDS, MD was engaged to perform the duties of BPM, who subsequently engaged the applicant No. 2 Sri Pramod Kumar-his son as substitute on his risk and responsibility. The applicant No. 2-Pramod Kumar was never appointed/engaged by the Appointing Authority i.e. S.D.I. (P) Domariya Ganj, after observing prescribed recruitment procedure for GDS. Having into account the less work, applicant's engagement came to an end of 11.09.2003 but in compliance of interim order, applicant No. 2 has been allowed to work. The applicants were never appointed/engaged on observing the prescribed recruitment procedure for GDS, and the applicants had been disengaged from the post of GDS, MD, Walterganj.

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There is Judgment of Hon'ble Apex Court against regularizing the services of a person who has not been engaged in accordance with the procedure of recruitment and as applicants were engaged against the procedure of recruitment hence their services were dispensed with. O.A. lacks merit and is liable to be dismissed.

4. One Supplementary Affidavit has also been filed on behalf of the respondents, which shall be considered at the relevant place.

5. We have heard Mr. Avnish Tripathi, Advocate for the applicants and Mr. Saurabh Srivastava, Advocate and Mr. N.P. Shukla, Advocate for the respondents, and perused the entire facts of the case.

6. From perusal of pleadings of the parties, it is evident that it has not been alleged by the applicants that how they were engaged originally. But it has been alleged by the applicants that earlier also O.A. No. 1187 of 2003 and O.A. No. 1188 of 2003 were filed by them, and both these Original Applications were decided on 29.03.2005. In the earlier O.A., applicants alleged that they were appointed

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on the post of GDS/EDDA by following the procedure but the respondents disputed this fact and alleged that the applicants were not appointed by following the procedure. No finding was recorded by the Tribunal to the effect that the applicants were duly appointed by following the procedure prescribed for GDS rather it was observed by the Tribunal that *"It is to be seen whether the appointment of the applicant was in accordance with the provisions of relevant recruitment rules, and if so, termination of the services of the applicant should be in accordance with law and by following the principles of natural justice. As the method of appointment of the applicant as claimed by him has not been admitted by the respondents, the respondents are at liberty to verify the same from the records and in case his appointment is, as contended by them, at the risk of some individual, whatever is the procedure for termination the same may be followed. Here again, the termination should not be for planting another substitute. Thus, the applicant is entitled to work till a regular incumbent is appointed and by virtue of the applicant's already working if the rules provide for any preference/concession in the appointment as per the Rules, the same shall also be extended to the applicant."* Hence from perusal of order of the Tribunal, it is clear that a definite finding was recorded by the Tribunal that the applicants

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were regularly appointed as GDS by following the prescribed procedure rather it has been left at the discretion of the respondents to decide that in case applicants were appointed according to procedure then their services may be terminated in the manner prescribed for terminating the services of such GDS, and in whatever manner, applicants were appointed, their services may be terminated accordingly. A discretion was given solely to the respondents to decide the case of the applicants.

7. Annexure-1 and annexure 1-A are the impugned order dated 26.04.2005 passed in the cases of the applicants-Chandra Prakash Tripathi and Pramod Kumar respectively. From perusal of these orders, it is evident that Mr. Chandra Prakash Tripathi was engaged at the risk and responsibility of Sri Ram Ujagir Mishra, GDS, MD, Walterganj and he was engaged as a substitute and while he was working as a Substitute then he filed an O.A. No. 1187 of 2003, and the O.A. was decided on 29.03.2005, and it was ordered that the applicants be permitted to work on the post of GDS as substitute in case his appointment is in accordance with due procedure. We have verified the records in order to ascertain the procedure for appointment of the applicant and from

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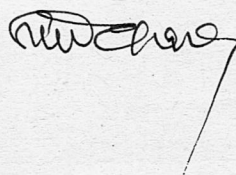
perusal of records, it is evident that the applicant No. 1- Chandra Prakash Tripathi was not appointed on the post of GDS by following the due procedure but he was engaged as a substitute and hence he may be removed with immediate effect, and in the case of Pramod Kumar- applicant No. 2 it was observed in the Order passed in O.A. No. 1188 of 2003 that he was never appointed or engaged hence he- Pramod Kumar cannot be permitted to work on the post, and Pramod Kumar was also removed from service with immediate effect. Later on, O.A. No. 512 of 2005 was filed and in the O.A., interim order was obtained and since then both the applicants have been working on the strength of the interim order.

8. From perusal of pleadings of the parties, it cannot be said that these applicants were appointed on the respective post after following the due procedure. It has been argued by learned counsel for the respondents that the applicant No. 1 was engaged against the stop gap arrangement after retirement of one Sri Bhola Nath Tiwari on the risk and responsibility of Sri Ram Ujagir Mishra- father of applicant No. 2. When Mr. Radhey Shyam Verma was transferred who had been working on the post of Village Postman, Walterganj, then Sri Ram Ujagir Mishra

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was engaged as Village Postman, and in turn he handed over the charge of GDS to his son-Pramod Kumar, applicant No. 2. Thus, according to the respondents, Sri Pramod Kumar-applicant is the son of Sri Ram Ujagir Mishra and from earlier he had been working on the post of GDS Walterganj as a consequence of transfer of Sri Radhey Shyam Verma, Village Postman, Walterganj. Sri Ram Ujagir Mishra was engaged as a stop gap arrangement as Village Postman. It was expected from Sri Ram Ujagir Mishra to work as a Village Postman as well as to discharge the duties of GDS but Sri Ram Ujagir Mishra illegally without approval of the respondents handed over the charge of GDS, Walterganj to his son namely applicant No. 2. There is no denial of this fact from the applicant's side.

9. It has also been argued by learned counsel for the respondents that on the strength of interim order in favour of applicants, Sri Ram Ujagir Mishra is also enjoying the benefit of interim order. As interim order was granted not to disturb the engagement of Pramod Kumar-applicant No. 2 as GDS and hence Sri Ram Ujagir Mishra is also enjoying the benefit of stay order and since then he has been continuing as a Village Postman. But Sri Ram



Ujagir Mishra ought to have performed his services as GDS only. The post of Village Postman is a promotional post of GDS and as per gradation list Sri Ram Ujagir Mishra is much junior GDS but in spite of these facts, Ram Ujagir Mishra is also getting the salary of Village Postman and his son-applicant No. 2 is receiving the salary of GDS. This is against the rules. The father is not competent to engage his own son on the post vacated by him. There appears no reason not to disagree with the arguments of learned counsel for the respondents. From the side of applicants, this fact has not been disputed. Sri Ram Ujagir Mishra was not entitled to engage his own son, as Sri Radhey Shyam Verma, Village Postman was transferred and hence Sri Ram Ujagir Mishra was engaged and directed to work as Village Postman till any further arrangement is made along with his duties of GDS. Earlier, Ram Ujagir Mishra had been working as a GDS. Against any law, rules etc, Sri Ram Ujagir Mishra while working as a Postman, cannot appoint his own son to work as GDS-the post on which he was earlier working. In our opinion, engagement of Sri Pramod Kumar-applicant No. 2 is against the law. He is not entitled to any relief whatsoever but surprising without perusing the facts of the case, an interim order was also granted in their favour and father and son continued to reap the

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fruits of the interim order granted by this Tribunal. Moreover, it is also a fact that earlier O.A. No. 1188 of 2003 was also filed on behalf of Pramod Kumar and in that O.A. also no finding was recorded that he was illegally appointed as GDS, and all the discretions were left to the respondents in order to decide that in what manner applicants were appointed and in pursuance of direction of the Tribunal, the respondents passed another order. They were justified in passing the order and there can be no reason to set aside and quash the orders (annexure-1 and 1-A). Neither he has been engaged nor appointed as substitute GDS and hence he deserves to be removed forthwith.

10. It has also been alleged regarding engagement of Chandra Prakash Tripathi by learned counsel for the respondents that he has also not been engaged as GDS after following the procedure prescribed in the rules. Applicant No. 1 was also engaged illegally. An order was issued by Assistant Superintendent of Post Offices (East) Sub Division, Basti on 09.09.2003 and it has been alleged in the order that Sri Indra Jeet Verma regularly appointed GDS, MD, Orwara will perform the duties of GDS ML in addition to his own duties without ignoring other

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substitute. It has also been alleged that one post of GDS, MC fallen vacant on 01.09.2002 due to retirement of Sri Bhola Nath Tiwari, and applicant No. 1 was engaged against the said vacant post in stop gap arrangement on the risk and responsibility of Sri Ram Ujagir Mishra, GDS, Walterganj and thereafter, after noticing this fact that the applicant has been engaged illegally, then direction was given to Sri Indra Jeet Verma, GDS, MD, Orwara that he will look after along with his own duty to the post of GDS, MC, and no person will be engaged. There were clear directions that no one shall be engaged and appointed but in spite of these instructions and orders, applicant No. 1 was also illegally engaged. Nothing has been alleged by the applicants that how they have been engaged hence whatever has been alleged by the respondents is to be believed and moreover the burden of proof lies on the applicant to prove that their engagement were regular and as per the prescribed procedure but they failed to show that by which procedure they have been appointed.

11. Much has been argued by learned counsel for the applicants that in the earlier O.A. No. 1187 and O.A. No. 1188 of 2003, order dated 29.03.2005 it has been observed that these applicants shall be permitted to work

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till regular appointments are made, and that no regular appointment has been made as yet, even then services of the applicants have been terminated without following any procedure. We have observed above that these applicants were not engaged by adopting the procedure, as provided in the concerned rules hence no procedure is to be followed for removal of these applicants who were illegally appointed. The Courts of law are not supposed to legalise the illegal action and after engaging his own son hence the case of the applicants is devoid of any merit. The appointment of GDS is also against the law and he also deserves to be removed with immediate effect in stead of justifying the engagement of applicants, learned counsel for the applicants argued that as observed in the earlier Judgment, applicants had a right to work till regular appointments are made but when the engagement of the applicants is void abinitio and in valid hence they are not entitled for any protection of law. It is the discretion of the respondents to initiate proceedings for regular appointment in accordance with rules but these applicants who were illegally appointed and one was engaged by his own father to obtain an order that he is entitled to work till regular appointment is made. Much has also been argued by learned counsel for the applicant that after receipt of the order dated 18.10.2011, the

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respondents, irrespective of the stay order passed by this Tribunal, removed these applicants from services and these acts of the respondents are highly objectionable and illegal, and they deserve to be punished under the Contempt of Courts Act. As we have observed that appointment of the applicants was illegal and void abinitio as their appointments or engagements were not made by following any procedure rather they have been engaged by their relation hence they are not entitled for any protection.

12. Learned counsel for the respondents also attracted our attention towards the various letters issued by D.G. Posts, New Delhi in which it has been provided that no post of GDS may be filled up in any office till further instructions and moreover in the letter dated 21st October 2002 procedure has been laid down. Following has been provided:

"During leave, every GDS should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him. Such approval should be obtained in writing" and that:

"It is necessary for the appointing authority to ensure that such a substitute is not allowed to work indefinitely. If the absence from duty of the regular GDS is likely to last indefinitely, the appointing

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authority should take immediate steps towards appointment and the person so appointed need not necessarily to be substituted."


We have already observed that no such procedure has been followed in the appointment or engagement of the applicant.

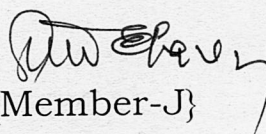
13. Learned counsel for the respondents also cited a Judgment of the Hon'ble Supreme Court reported in (2006) 4 SCC page 1 Secretary, State of Karnataka and others Vs. Umadevi (3) and others. The Hon'ble Apex Court held that there is no fundamental right available to those persons who were appointed on contractual basis. They cannot claim that they have a right to be absorbed in services. Hence, learned counsel for the respondents argued that applicants' services cannot be regularised. We have perused the Judgment of the Hon'ble Supreme Court and we are of the opinion that case of the applicants is worst than the case of the respondents before the Hon'ble Supreme Court. The applicants were never appointed as Daily Wager or Substitute by the competent authority and hence they have no right.

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14. For the reasons mentioned above, we are of the opinion that the applicants failed to show that they have been legally appointed or engaged by following the procedure as provided in the Rules relating to GDS and applicant No. 2 was engaged by his own father at his own place as GDS when a person holding the post of Postman was transferred and Sri Ram Ujagir Mishra was ordered to work as Postman in addition to his work, and rather following the direction of the respondents, he engaged his own son and it is absolutely illegal and devoid of any merit. Moreover, engagement and appointment of the applicant No. 1 is against the law. He has only been engaged illegally. The applicants are not entitled to any relief. O.A. is liable to be dismissed.

15. O.A. is dismissed. Stay granted earlier, if any, is vacated forthwith. No cost.


(Member-A)


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