

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 27/5 day of April 2010

Original Application No. 620 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Atul Kumar Tripathi Son of Sri S.D.Tripathi, Resident of
Mohalla-I- 776 E.W.S. Gunjani, District-Kanpur (City).

..... Applicant

By Adv. : Shri Avnish Tripathi

VERSUS

1. Union of India through it's Secretary (Post) Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Senior Superintendent of Post Office, Kanpur Division, Kanpur (City)
3. Assistant Superintendent of Post Offices, West Division Kanpur.
4. Anil Kumar E.D. (G.D.S.) Packer Shivaji Nagar, Kanpur.

..... Respondents

By Adv. : Shri R.K. Srivastava



O R D E R

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-Judicial)

1. The facts of the case are that consequent to the arising of a vacancy in the post of GDS Packer, Shivaji Nagar, Kanpur due to the demise of its regular incumbent, the applicant aspired for the said post and was appointed vide Charge Report dated 27-03-2003 at Annexure A-1. After an artificial break for a day, the applicant was again engaged on the said post on 01-08-2003 followed by a further break for a day and reengagement on 01-12-2003 upto 31-05-2004. During the break, respondent No 4 was engaged. A like exercise continued again on 01-09-2004 and it was from 03-12-2004 that the applicant continuously worked till 04-04-2005, when some other person was asked to work in the post hitherto held by the applicant. According to the applicant, the alternative arrangement made is against law, as the respondents could dislodge the applicant only if a regular appointment is made. Hence this OA praying for the following relief:-

“(i) to issue writ, order or direction for quashing and setting aside the impugned verbal order of the respondent No.3 terminating the provisional engagement of the applicant on the said post of ED. (G.D.S.) packer, Shivaji Nagar, Kanpur by making further Ad hoc/Substitute arrangement.

- (ii) to issue writ, order or direction in the nature of mandamus directing the respondents to regularize the services of the applicant on the said post of E.D. (G.D.S.) Packer, Shivaji Nagar, Kanpur as the applicant fulfilled all the eligibility condition for appointment on the said and has served for considerable period 2-1/2 years regularly with the entire satisfaction of his superior.
- (iii) to issue writ, order or direction in the nature of mandamus directing the respondents to allow the applicant to work on the said post of E.D. (G.D.S.) Packer, Shivaji Nagar, Kanpur as usual and also direct the respondents to pay his salary as and when due."

2. Official respondents in their counter have stated that due to introduction of computer, the work load of GDS (S/V) decreased in several post offices and some of those who were rendered surplus were to be accommodated against regular vacancies of GDS and accordingly, one of the stamp vendors, rendered as surplus has been accommodated disengaging the applicant, who was engaged only as a stop gap arrangement.

3. The applicant has filed his rejoinder, in which he had reiterated his averments and contentions in the O.A.

4. Counsel for the applicant has argued that regular appointment is made by due notification and till then the

applicant must be permitted to perform his duties as he had been continuously (except by way of artificial break) working in that post.

5. Counsel for the respondents submitted that since the applicant was not appointed by due process of selection he does have leg to stand and that the replacement is not by another ad hoc candidate but a surplus individual, who is no less than a regular candidate.

6. Arguments were heard and documents perused. Admittedly, when the applicant was engaged, the same was not by way of calling for applications from various eligible candidates for appointment on provisional basis. It was certainly only stop gap arrangement. Thus, he does not have any grass root to stick to that post. And when there were surpluses of stamp vendors, these stamp vendors having been appointed on regular basis, they were to be accommodated suitably. It was under such circumstances that another person Smt. Shashi Lala Sharma came to be appointed. The respondents were right in contending that though the full details of this individual are known to the applicant, he chose not to implead her as respondent in this O.A.

Thus, if the initial appointment of the stamp vendor had been on regular basis, then the post of GDS, Packer, Shivaji Nagar, Kanpur would be treated to have been filled on regular basis by a regular appointee. In case, her appointment was not on regular basis, then she could be permitted to replace the applicant. Thus, all that is to be seen is whether the fourth respondent was appointed on regular basis and whether he was entitled to be accommodated under the surplus scheme. From para 12 of the reply it is seen that the said individual is a regular incumbent. As such, her appointment cannot be questioned.

7. In view of the above, the applicant has no case and hence the OA is dismissed.

8. No cost.



(D.C. Lakha)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil