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RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 647 OF 2005.

ALLAHABAD THIS THE 29th DAY OF November.....2006.

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

Brij Bhan Singh son of Sri Jai Karan Singh, aged 34 years r/o Vill and post Ahmad Pur Pawan (Manauri), District Allahabad.

.....Applicant.

(By Advocate: Sri O.P Gupta)

Versus.

1. Union of India through Secretary, Ministry of Communication, Govt. of India, New Delhi.
2. The Chief Post Master General, U.P Circle at Lucknow.
3. Assistant Superintendent of Post Offices, Central Sub Division, Allahabad.
4. Yash Want Singh s/o late Raj Bahadur r/o Vill- Mardan Pur, Post Manuari, District Allahabad and recently appointed as G.D.S. M.C. Ahmad Pur Pawan.

.....Respondents.

(By Advocate: Sri Saumitra Singh)

O R D E R

By Dr. K.B.S Rajan, J.M

Brief facts of the case as successfully brought in the list of dates and Gist of case in the O.A would suffice to have a hang of the issue involved in the case and the same is reproduced below.

(a) Post of E.D. Mail Carrier, Ahmad Pur Pawan fallen vacant and applicant was engaged initially as a substitute E.D.M.C on 27.6.2000 (Annexure A-1).

(b) Applicant as temporary E.D.M.C after completing all formalities Medical examination, police verification and verification of educational certificates was also done and he

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deposited security of Rs. 4000/- and filled up Service forms (Annexure A-2 to A-4).

(c) Service of applicant was terminated to accommodate one Rama Nand Mishra. He challenged the same by filing O.A. NO.723/2003 which was allowed with direction to continue on the post of E.D.M.C till regular selection is made and at the time of selection, applicant shall also be considered by giving due weightage to the merit and experience (Annexure A-5).

(d) C.P.M. G suddenly agreed to appoint the respondent NO.4 vice applicant on compassionate grounds (Annexure A-6).

(e) Respondent No.3 issued appointment order appointing respondent NO.4 as G.D.S. M.C Ahmad Pur Pawan and applicant is asked to handover charge of the post to newly appointed person and no has order of any kind has been communicated to the applicant (Annexure A-7). However, he has not handed over charge of the post on oral direction.

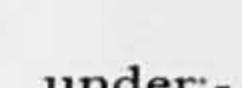
(f) Applicant submitted (Annexure A-8) representation before the respondents but with no result. Hence this O.A. is being filed to challenge the appointment order of respondent NO.4.

2. The applicant prays for the following relief(s):-

"(i) To quash the impugned appointment orders dated 18.4.2005 and 20.5.2005 passed by the respondents NO. 2 and 3 respectively (Annexure No. A-6 & A-7).

(ii) To direct the respondent NO.2 and 3 to allow duty to the applicant as G.D.S M.C. Ahmad Pur Pawan with all consequential benefits of continuity of service including seniority and salary for the intervening period".

3. Respondents have resisted the O.A. and their version is as under:-



(11)

- (i) The post of G.D.S M.C. Ahmadpur Pawan (Manauri), Allahabad fell vacant due to death of regular employee on 28.06.2000 and the applicant was engaged as substitute vide the ASPOs, Central Sub Division, Allahabad order dated 27.6.2000 on responsibility of Sri Chandra Bhan Singh, the then officiating BPM, Ahmadpur and the applicant worked upto 08.11.2000.
- (ii) Again the applicant was engaged as EDMC, Ahmadpur Pawan vide ASPOs, Central Sub Division, Allahabad Memo NO. A/Ahmadpur Pawan/2000/dated 18.6.2001 on purely temporary basis since 20.06.2001. It was mentioned in the both the orders dated 07.11.2000 and 18.06.2001 that the temporary engagement would be terminated at the time of regular appointment. The engagement of the applicant was terminated vide ASPOs Memo No.A/Ahmadpur Pawan dated 30.06.2003 to avoid any further complication arising in case of approval by the CRC for appointment on compassionate grounds to the dependent of late Raj Bahadur, Ex GDS M.C, Ahmadpur Pawan, or on completion of three years period as temporary engagement of Sri Brij Bhan Singh. The applicant was replaced by Mail Overseer, Central Sub Division, Allahabad w.e.f. 01.07.2003.
- (iii) That on 18.07.2003, the applicant submitted application dated 16.7.2003 alongwith an order dated 09.07.2003 of this Bench in connection with O.A. NO.723/2003, which contained direction to engage him immediately and to allow him to continue on the post of EDMC, Ahmadpur Pawan till a regularly selected incumbent is appointed. This was complied with vide order dated 18.7.2003.
- (iv) That subsequently on Sri Yaswant Singh was appointed on compassionate grounds on the recommendation of CRC at Lucknow vide memo NO. Rectt./M-8/318/2000/2 dated

18.4.2005 as such applicant was relieved vide memo dated 19.5.2005.

(v) The applicant is at liberty to apply for the vacant post, if any, for which he is suitable and his case can be only considered on merit as per direction of the Hon'ble CAT, Allahabad.

4. Applicant filed rejoinder, The crux of which is as under:-

"It is further submitted that during the pendency of this O.A. respondents have engaged applicant again against another vacant post of ED as GDS M.C Gauspur vide order dated 22.12.2005 and applicant is allowed to work on the post w.e.f. 3.1.2006 and on the said post applicant is still working. But grievance of the applicant is still continuing such as what shall be the fate of intervening period and when applicant will be given regular appointment on E.D. Post to get seniority and salary".

5. Report of respondents to his rejoinder as given in supplementary reply is as under:-

- (a) As per recruitment procedure any appointment is to be made after calling nominations through the Employment Exchange and advertisement from public or on compassionate grounds vide Annexure SCA-1.
- (b) The applicant does not come in premises of this rules, hence there was no need to issue one month prior notice or one month advance salary.
- (c) Regularisation cannot be a mode of recruitment as the same would be violation of the Article 309 of the Constitution of India and the mode prolonged and



extended engagement on provisional basis does not result in any claim for substantive status. Accordingly, the applicant has no right for regularization on regular appointment.

(d) The applicant has been engaged as GDSMC, Gauspur in Stop Gap Arrangement as substitute. The applicant should be reengaged and allowed to continue as G.DS MC Ahmadpur Pawan till regularly selected person is appointed. Shri Yashwant Singh has been appointed regularly on compassionate grounds. Engagement as GDS MC, Gaurpur from ~~dated~~ 03.01.2006 has nothing to do with instant original application NO.647/2005. No appointment is to be made on the post of GDS MC, Gauspur as neither the said vacancy has been cleared by the competent authority nor any selection process has been adopted for filling the said post.

6. Counsel for the applicant argued that the order dated 30.6.2003 gives necessary findings/direction as under:-

"For the aforesaid reasons, the O.A. is allowed. The impugned order dated 30.06.2003 (Ann. A 12) issued by the respondent NO.2 is quashed. The respondent NO.2 is directed to reengage the applicant immediately and treat the intervening period as continuous, from the date of communication of this order. However, the applicant shall not be allowed to continue on the post of EDMC, Ahmadpur Pawan till a regularly selected person is appointed. It is also directed that the candidature of the applicant shall be considered at the time of regular selection is made, if applicant applies, keeping in view the merit and experience of the applicant. The O.A. is decided accordingly at the admission stage".

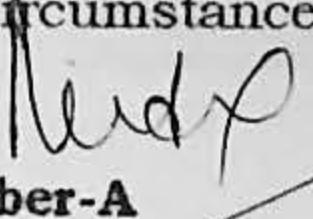
7. The counsel for the applicant submitted that when this Tribunal has directed that the applicant has to continue till regular appointment

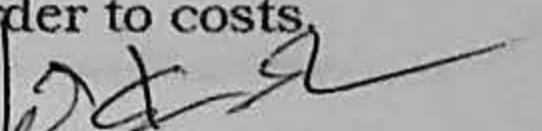
is made, directing the post of GDS MC at Ahmadpur for compassionate appointment amounts to stultification of the order. Even if compassionate appointment could be made at the ~~direction~~ ^{discretion &} of the Authorities, then again, the rights of the applicant should be protected.

8. Counsel for respondents submitted that the applicant is accommodated on temporary basis at Gauspur and for the time being there is no proposal to fill up that post on regular basis as the vacancy has not been cleared.

9. Arguments were heard and documents perused. The direction given by this Tribunal vide Annexure A-5 order is specific and unambiguous. That crystallizes the right of the applicant to be continued in temporary service and apply for regular post. The respondents did not challenge the said order but submitted to the same. The applicant is now allowed to function as GDS MC at Gauspur instead of Ahmad Pur, as that vacancy has since been consumed by compassionate appointment. The respondents cannot be faulted with for their action in so far as direction of the vacancy at Ahmadpur to compassionate appointment. But in order to secure and protect the right of the applicant, his case should be considered for regular appointment as and when decision to fill up Gauspur vacancy on regular basis is taken. Till then the respondents shall allow the applicant to continue in the said post on temporary basis. As the applicant has now served for more than 3 years as provisional/temporary hand, any benefit arising or accruing out of this experience shall be available to the applicant. Further decision to fill up Gauspur vacancy should be taken at the earliest.

Under the circumstances, there shall be no order to costs


Member-A


Member-J

Manish/-