

Approved for Reporting

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 24th DAY OF NOVEMBER, 2009)

PRESENT:

HON'BLE MR. JUSTICE A. K. YOG, MEMBER (J)

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

ORIGINAL APPLICATION NO. 819 OF 2005

(Under Section 19, Administrative Tribunal Act, 1985)

Break Bhan Ram son of Sri Chillar, Resident of Tulsi Ashram (Nonar),
District – Chandauli.

.....Applicant.

By Advocates:- Shri Avnish Tripathi

Versus

1. Union of India through it's Secretary, Ministry of Communication,
Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Senior Superintendent of Post Offices, East Division, Varanasi.
3. Sub-Divisional Inspector, Chandauli Sub Division, Chandauli.

.....Respondents

By Advocate- Shri Himanshu Singh

ORDER

(DELIVERED BY: JUSTICE A. K. YOG- MEMBER-JUDICIAL)

Shri Avnish Tripathi Advocate representing the applicant and Shri
Himanshu Singh Advocate (appearing on behalf of the Respondents).

2. The applicant vide para 8 of the O.A, has claimed following relief/s:-

"i) issue an order, rule or direction for quashing and
setting aside the verbal termination order passed by the
respondent no. 2 by which respondents no. 2 are intending



to terminate the provisional appointment of the applicant by engaging another person as a substitutes/Edhoc arrangement.

ii). to issue an order, rule or direction to the nature of mandamus directing the respondent no. 2 to consider the claim of the applicant for giving him regular appointment on the post of E.D.B.P.M Tulsi Ashram (Nonar), Chandauli being working as E.D. Agent by giving him preference as provided under the rules.


iii). to issue an order, rule or direction in the nature of mandamus directing the respondent no. 2 not to replace the applicant by making further substitute/Edhoc arrangement and the applicant be allowed to continue work on the said post and draw the salary as usual.

iv). to issue any rule, order or direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

v). Award the cost of the application in favour of the Applicant."

3. The applicant was appointed and working since 1990 as E.D.D.A. (Extra Departmental Delivery Agent) in the Branch Post office Tulsi Ashram (Nonar), Chandauli where one Gudari Prasad was working as E.D.B.P.M. (Extra Departmental Branch Post Master) at Branch Post Office, Tulsi Ashram (Nonar), Chandauli (Jhansi), U.P. Said Gudari Prasad, after prolong illness died on Jan 14, 2005. Vide order dated 14.01.2005 (Annexure-A-2/Compilation-I) the applicant was appointed on officiating basis as E.D.B.P.M of the said Branch. There is no dispute that the applicant took charge as E.D.B.P.M. and working as such till date.

4. There is nothing on record to show that working of the Applicant as E.D.D.A or as E.D.B.P.M. is not satisfactory. Learned counsel for the Respondent concedes that there is no pleading in the Counter and or Supplementary Counter Affidavits/Reply – to show otherwise. This shows



that the applicant has throughout worked to the satisfaction of the Respondent - Authorities as E.D.B.P.M.

5. The applicant, being eligible, submitted an application for his regularization as E.D.B.P.M Branch Post office (copy of his representation filed as Annexure A-3/Compilation-II), followed by another representation dated 27.05.2005 (Annexure A-4/compilation-II), and reminder dated 03.06.2005 (Annexure-A-5/Compilation-II). According to the applicant, he has submitted all the requisite papers. Above contention of the Applicant find place in para 4.4 and 4.5 of the O.A. but the pleadings (on this score) are, in so may words admitted and not denied (vide para 7 & 8 of the Counter Affidavit sworn by RAJIV GANGULY, Sr. Supdt. Of Post Office Varanasi- on 13.11.2005 (filed through Sh. S. SINGH – the then SSC Govt, of India. Accordingly the applicant claims that his officiating appointment/engagement deserves to be regularized and he should be continued on the post (in question) of E.D.B.P.M.

6. The Applicant places reliance upon – para 19 & 16 (2) D.G, instruction dated 12.09.1988 relevant extract of the same reads:-

“Para 19. Transfer of ED Agents from one post to another
.....

When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that, post he may be allowed to be appointed against that vacant post without coming through the Employment Exchange provided he is suitable for the other post and fulfills all the required conditions.”

{D.G. Posts letter NO. 43-27/85 – Pen.- (EDC & Trg.) dt. The 12th Sept. 1988-

- Swamy's Compilation of – SERVICE RULES for – Extra Departmental Staff – In Postal Department – Fift. Edu. 1992.

“Para – 16 Selection and Appointment of EDAs from those working –

Ans /

- (a)-----
 (b)-----
 (c)-----

2. It has been decided by the Postmaster-General that working ED Agents should be given priority over all other categories except retrenched ED Agents for selection of various ED posts if they satisfy all the conditions prescribed in the office letter No. STA/1/28-Rlgs., dated 24-10-76, as amended from time to time and if the appointment in the new post is in public interest. The concession is, however, applicable to the following category of ED Agents only:-

(i). ED Agents appointed prior to the introduction of the residence conditions.

(ii). ED Agents who had acquired residences in new locality by purchase or inheritance.

(iii). All women ED Agents who have to shift the residence after marriage.

3.”
 (P.M.G. Kerala Circular NO. STA/102/6-VI dated 7.11.1978)
 Swamy's Compilation – Vth Edn. 1992.

7. This Tribunal passed following interim orders:-

“Dated: 26.07.05
Hon' Mr. D.R. Tiwari, A.M.
Hon' Mr. K.B.S. Rajan, J.M.

Heard Sri. A. Tripathi for the applicant and Sri R. C. Shukla, holding brief of Sri S. Singh, counsel for respondents,

Learned counsel for respondents prays for and is granted 4 weeks to file CA. 2 weeks thereafter to file RA. List on 20.09.05,

In the meanwhile status quo in respect of the applicant shall be maintained by the next date.

Sd
 JM

Sd
 AM”

“Dated: 20.09.05
Hon' Mr. A.K. Bhatnagar, J.M.
Hon' Mr. D.R. Tiwari, A.M.

Shri A. Gaur holding brief of Shri A. Tripathi, learned counsel for the applicant and Shri R. C. Shukla holding brief of Shri S. Singh, learned counsel for the respondents.

Am

Learned counsel for the respondents prays for and granted further four weeks time for filing counter. Two weeks thereafter for filing rejoinder.
List on 09.11.2005.

Interim order to continue till the next date.

Sd
JM

Sd
AM"

"Dated: 09.11.05
Hon' Mr. K.B.S. Rajan, J.M.
Hon' Mr. A. K. Singh, A.M.

Sri A. Tripathi, learned counsel for applicant and Sri R. C. Shukla, learned counsel for Respondents.

It has been stated by the counsel for Respondents that communication was sent to the Respondents as early as on 19.7.05 followed by another one on 10.9.05 but there has been no response. Admitted. Interim order to continue till the disposal of the case.

In their own interest, Respondents may file counter within four weeks.

Rejoinder, if any, within two weeks thereafter.

List before Registrar for completion of pleadings on 21.12.05.

Sd
JM

Sd
AM"

8. The Respondents filed Counter Affidavit. Defence of the Respondents is – two fold-

(I) The claim of the applicant (for regularization on the Post of E.D.B.P.M.) could not be considered as the case of compassionate appointment of Subhash Yadav – (the son of deceased Gudari Prasad erstwhile – EDBPM) against the post of E.D.B.P.M held by the Applicant and finally Appointment letter dated 16.6.2006 in favour of Subhash Yadav (S/o deceased Gudari Prasad) has been issued (see Supplementary Counter Affidavit sworn by R.S. Mishra on 14.12.2008 filed on 18.12.2008 in the Registry through Sh. S.C. Mishra – the then SSC (GOI).

(II) Reliance is placed by the Respondents on Instruction of D.G. (Post) dated 5.8.1993; relevant extract

Ans

of para 4 & 7 of C.A. (sworn by Rajiv Ganguly filed through Sh. S. Singh S.S.C.- G.O.I) reads:-

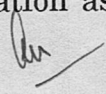
"4.As per DG (Posts) instruction dated 05.08.1993, no regular appointment on any post of GDS, which fell vacant due to expiry of or invalidity retirement of the working GDS employee could be made until any case of compassionate appointment on the vacant post is pending.....".

7. *That in reply to the contents stated in paragraph 4.4 of the Original Application, it is stated that as regards instruction dated 12.09.1988 of DG (Posts) vide letter No. 43-27/85 Pen (EDC & Trg), it is submitted that in supersession of existing P&T ED Agents (C&S) Rules, 1964, the revised rules called the GDS (conduct and Employment) Rule, 2001 are in existence. As per ruling circulated prevalent at present, a GDS shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest..... "*

9. From aforequoted pleading brought on record by the Parties it is clear that Subash Yadav is neither working on the post of E.D.B.P.M. (presently held by the applicant) not come forward to join those proceedings and also that claim of the applicant (as referred to above in this order) has not been considered in the light of the DG instruction relied upon by the Applicant/Respondents.

10. In view of the above, end of justice require that Respondent Authorities should first decide the claim of the Applicant made through his representation which is said to be not decide so far as per the then existing G.Os/Relevant Rules, Circulars, Instructions, etc.

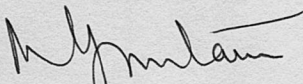
11. In the result, we direct the Applicant to file within 6 weeks, a comprehensive parawise Representation as well as, O.A (both Comp. I &




II) before Respondent No. 2/ Senior Superintendent of Post Offices, East Division, Varanasi who is required to decide within 4 months of receipt of Representation (provided certified copy of this Order with Representation is filed within the time stipulated above before said Authority) by passing a reasoned speaking order.

12. It is made clear that unless claim of the applicant (on the post of E.D.B.P.M in question) is decided (as indicated above), the Respondent shall maintain '*Status quo* to the extent it relates to the Applicant and as directed under (aforequoted) Interim Order of this Tribunal, unless otherwise applicant renders himself disqualified or otherwise ineligible.

13. O.A. stands allowed subject to the above observations. No Costs.


Member-A


Member-J

/Dev/