

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This The 29 th Day Of May 2011)

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

Original Application No. 820 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Mahendra Nath Pandey S/o Sri Surya Bali Pandey, Resident of
Village and Post-Huruua, Tehsil-Sadar, District-Mirzapur.

..... **Applicant**

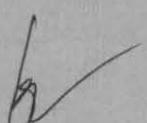
By Advocate: **Shri Avnish Tripathi**

Versus

1. Union of India through it's Secretary (Post) Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Senior Superintendent of Post Offices, Mirzapur Division, Mirzapur.
3. Assistant Superintendent of Post Offices, West Subdivision, Mirzapur.

..... **Respondents**

By Advocate: **Shri R.D. Tiwari**

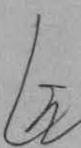


ORDER

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

1. The applicant's claim is that he should be given the preemptive right for appointment against the regular post of Extra Departmental Stamp Vender, Mirzapur Chowk, Mirzapur on the ground that he had earlier worked on stopgap arrangement for seven months. He was verbally asked to overhand the charges by the respondents. His prayer includes the following relief/s:-

- "(a) to issue order, rule 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 Extra Departmental Stamp Vender, Mirzapur Chowk Mirzapur by making further substitute/ Ad hoc arrangement.
- (b) to issue an order rule or direction in the nature of mandamus directing the respondents to regularize the services of the applicant on the said post of E.D.S.V. Mirzapur Chowk, Mirzapur as the applicant fulfilled all the eligibility condition for appointment on the said post and has served for considerable period about seven months regularly with the entire satisfaction of his superior.
- (c) to issue an order, rule or direction in the nature of mandamus directing the respondents no.3 to allow the applicant to work on the said post of Extra Departmental Stamp Vender, Mirzapur Chowk, Mirzapur till the regular appointment is made as usual and also direct the respondents to pay his salary as and when due."



2. Earlier on 26.07.2005 by an interim order the respondents were directed not to disturb the working of the applicant as Extra Departmental Stamp Vendor, Mirzapur till the short counter was filed. This interim order continued. Pleadings are compete in this case.

3. Respondents have contended that the applicant was never appointed on provisional basis. The action taken by the respondents is in conformity by the Rules and Regulations.

4. The applicant has filed his Rejoinder Affidavit, reiterating his averments and contention made in the Original Application.

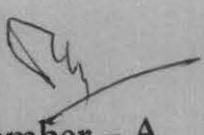
5. Supplementary Counter Affidavit has also been filed.

6. Arguments were advanced by the parties. Counsel for the applicant relied upon the decision by this Tribunal in O.A. No.967 of 2006 decided on 09.02.2010 wherein it was held that a substitute cannot be replaced by another substitute as held in the decision of the Supreme Court in the case of **State of Haryana v. Piyara Singh** 1992(4) SCC 118.

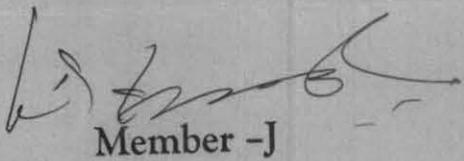
7. As the applicant is continuing Stamp Vendor ^{b/w} file a regular incumbent is appointed following due procedure, the applicant may have to be continued save if the services ought to be terminated on the ground of misconduct, if any. He cannot, however, claim any benefit on account of his continuance in

service on the strength of an interim order of the Tribunal. His position cannot be equated with any provisional appointee appointed by following the relevant Rules and Regulations.

8. With the above direction, the O.A. is disposed of. No costs.



Member - A



Member - J

Sushil