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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 31<sup>st</sup> day of May, 2007

Original Application No. 973 of 2005

Hon'ble Dr. K.B.S. Rajan, Member (J)  
Hon'ble Mr. P.K. Chatterji, Member (A)

Jyoti Prakash Mishra, S/o Shri H.S. Mishra, R/o  
Village Chakjurani, Post Office Mondh, Tehsil  
Bhadohi, Distt: Sant Ravidas Nagar Bhadohi.

. . . Applicant

By Adv: Sri D. Mishra

V E R S U S

1. The Union of India through Secretary,  
Ministry of Communication, Department of Post,  
Sanchar Bhawan, New Delhi.
2. Chief Post Master General, Lucknow.
3. Post Master General, Allahabad.
4. Post Master General, Varanasi.
5. Sub Regional Inspector (Post Office) Gyanpur  
Sub Region, Sant Ravidas Nagar Bhadohi.
6. Sub Post Master Mndh, Sant Ravidas Nagar,  
Bhadohi.
7. Assistant Post Master, Kariyaon, SRN Bhadohi.

By Adv: Sri S. Singh

. . . Respondents

O R D E R

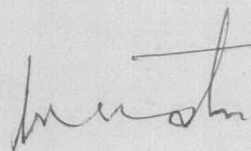
By Hon'ble Mr. P.K. Chatterji, Member (A)

Briefly stated the facts of this OA are that  
the applicant was engaged to work as Extra  
Departmental Packer at the Post Office Kariyaom  
Distt: Sant Ravidas Nagar Bhadohi from 25.02.1999.

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Although he was formally engaged to work as EDDA Packer only from 25.02.1999, it has been stated by the applicant that since 01.12.1997 he was working in place of his father who was on continuous medical leave. The respondents sent a letter on 14.10.1999 to the applicant asking him if he would work as EDDA Packer in place of his father. The applicant appeared before the Inspector of Post Offices Gyanpur on 25.02.1999 alongwith all educational certificates. Thereafter, the inspector issued a letter on 25.02.1999 engaging him to work as EDDA Packer at the Post Office.

2. The applicant continued to work in the same post for a number of years. But on 22.06.2005 a letter was issued by respondent No. 5 terminating his service. The applicant had stated that he possessed the requisite educational qualification for the job of EDDA Packer and he was doing the job without any complaint from any quarters. The action of respondent No. 5 in terminating the job suddenly without any reason was arbitrary and illegal. The applicant has further stated that after terminating his job the respondents have brought in another person in an adhoc capacity which is illegal. Being aggrieved by the decision of the respondents the applicant has approached this Tribunal praying for reliefs as under:





- "i. The termination order dated 22.06.2005 passed by the respondent No. 5 Sub-Regional Inspector (Post Office) Gyanpur Sub-Region Gyanpur, Sant Ravidas Nagar, Bhadohi be quashed.
- ii. The respondents be directed that to allow the applicant to be discharge his duty without any interruption.
- iii. To issue any other suitable order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- iv. To award cost of the application to the applicant."

3. The allegation are refuted by the respondents in their CA. It has been stated by the respondents that the applicant was never appointed to the post of EDDA Packer at the said Post Officer. It was only stop gap arrangement as his father, the regular incumbent was on medical leave. So the applicant was provisionally engaged by the then SDI (P) by memo dated 25.02.1999. The respondents have also stated that the engagement was not permitted by the office of the Superintendent of Post Offices Varanasi. It has further been stated by the respondents in the CA that the SDI (P) Gyanpur issued a letter dated 17.02.2004 to discharge the applicant from the post. But he was not relived form the post due to the failure of the successor of the SDI (P) and in this way the applicant was allowed irregularly to work till 19.08.2005.

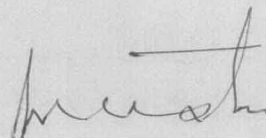
4. The respondents have also submitted that on 31.10.2005 a show cause notice was issued to the applicant to submit his representation against the

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proposal for termination. In compliance of the said order the applicant attended the office on 14.11.2005 and submitted a copy of the order of his initial engagement dated 25.02.1999. It is further stated by the respondents in the following para of the counter affidavit that the engagement was found to be irregular as no prior permission was taken by the then SDI (P) Gyanpur. While they make this averment in para D and E of the preliminary submissions, at para 8 of the CA it is stated that the order annexed as annexure 1 of the document is a forged one. This has been vehemently denied by the applicant who has also produced a photocopy of the original order before the Tribunal. The respondents have not substantiated their claim that the annexure 1 was a forged document. From perusal of the documents and the submissions it appears to us annexure 1 may not be a forged document. What however, is more important in this OA is the letter dated 25.02.1999 (Annexure 2) i.e. the letter of engagement whose authenticity has not been challenged by the respondents. Thus it is clear that the applicant was engaged to work in place of his ailing father as EDDA Packer.

5. As to the point raised by the respondents that the order was irregular and it did not have the prior approval of the Superintendent of Post Offices a question was asked of the learned counsel for the

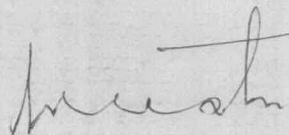




respondents as to the rule which stipulated that such permission was necessary. He could not cite any such rule. He did not seem to be aware of any. Being the appointing authority of EDDA within the Sub Division the authority or the SDI (P) in making arrangement for substitute against temporary vacancy appears to be reasonable and we do not think that the SDI (P) exceeded his authority in this matter. If the respondents were able to produce any rule to the contrary it would have been otherwise. However, they have not done so.

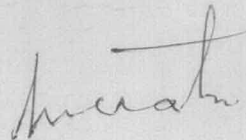
6. The respondents have further stated that the applicant was engaged purely as a substitute and according to the settled law the substitute does not have any right for the post to which he as engaged as a substitute. It has further been pointed out by the learned counsel for the respondents that it was clearly indicated in the letter dated 25.02.1999 that the arrangement could be terminated at any time and the applicant did not have any right to the post. The learned counsel for the respondents has also cited the relevant decision of the Apex Court that the substitute has no right on the post.

7. On the other hand the learned counsel for the applicant argued that the applicant worked as a substitute for nearly 6 years. As per the condition prescribed he fulfils all the requisite



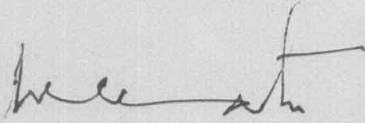
qualifications for the post of EDDA. He is also discharging his duties to the satisfaction of everybody. The learned counsel for the applicant has also brought to our notice that the post has not been filled up to this date. Referring to the Apex Court judgment in Devika Gua Vs. U.O.I. the learned counsel has stated that in the same judgment the Apex Court had held that although substitutes has no right to be appointed to the post, if the arrangement was prolonged, he deserves favorable consideration. Although he has not given extracts from the same judgment he has stated the crux of the Judgment.

8. Having heard the arguments and gone through the pleadings we are of the view that the engagement of the applicant as a substitute was long enough. Therefore, it deserves to be favorable considered as per the settled position. We, therefore, direct after quashing the impugned order of termination dated 22.06.2005, that respondent No. 5 will reappoint the applicant to work as EDDA Packer in place of his father. If the post has already been vacated by his father, the applicant should be considered for regular appointment on that post subject to his fulfilling the requisite qualifications. If, however, he has crossed the permissible age limit by this time, this should be relaxed in his favour. If the post has not already

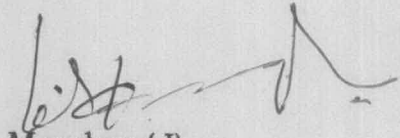




been vacated by his father the applicant should be allowed to continue to work as substitute in place of his father until such time as his father resumes duty or vacates the office by retirement. With these orders we dispose of this OA. No cost.



Member (A)



Member (J)

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