

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Dated: Allahabad, the 23rd day of July, 2001

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, JM

TRANSFER APPLICATION NO. 1670 OF 1987

ARISING OUT OF

WRIT PETITION NO. 8850 OF 1985

Ramesh Prasad Tewari,
s/o Sri D. D. Tiwari,
r/o 119/499 New Darshan Purwa,
Kanpur.

By Advocate: Sri N.P. Singh . . . Petitioner
Versus

1. Director, Postal Services,
Kanpur Region, Kanpur.
2. Senior Superintendent,
Post Offices, Kanpur City Division,
Kanpur.
3. Sub Divisional Inspector, (Post Offices),
Sub-Division, Kanpur.

By Advocate; Sri Ashok Mohiley . . . Respondents

O_R_D_E_R (ORAL)

(By Hon'ble Mr. S. Dayal, A.M)

This Transfer Application was filed as a
Writ Petition with the prayer that a direction be
issued to the respondents treating the applicant

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as in continuous service. A prayer has also been sought for setting aside the order dated 7.6.85. The applicant claims to be nominated by one Sri S.C. Misra working as Extra Departmental Stamp Vendor in Khapra Mohal Post Office, Kanpur as a substitute. He worked from 29.11.77 to 9.3.79. He later on worked as Stamp Vendor at Railganj Sub Post Office Kanpur from 9.5.79 to 6.9.79. He was engaged as a substitute of Sri Santosh Kumar Gupta, Extra Departmental Delivery Agent in Naubasta Post Office from 6.9.79 and on 29.4.80, he was engaged by Sri Chhote Lal, who was Extra Departmental Delivery Agent. He claims to have worked from 11.6.81 to 18.9.81 in Post Office Kidwai Nagar as a Letter Box Peon and subsequently, Extra Departmental Stamp Vendor of Chakeri Post Office and as E.D.D.A. in the Sub Post Office of New P.A.C. Lines upto 11.1.1982. He thereafter worked as Extra Departmental Branch Postmaster in Shivnash Tannery Post Office upto 17.10.1982. On 18.10.82, he was posted as Extra Departmental Branch Postmaster, Laxmipurwa Mobile Rikshaw Post Office under Anwarganj Sub Post-Office. He claims to have rendered more than three years' regular service from the date of his appointment. He has mentioned that one Sri Sheo Shanker Shukla was working as E.D.D.A. in the Post Office Laxmi Purwa prior to his appointment. On his promotion to the post of Postman, the applicant was engaged against a clear vacancy. He claims that the names of candidates including the name of the applicant was sent thrice for regular appointment, but no regular appointment was made. He, however, received a letter dated 7.6.85,

informing about the closure of Laxmipurwa Mobile Riksha Post Office. The relief of treating the applicant in continuous service has been made in context of the above facts.

2. We have heard Sri N.P. Singh for the applicant and Sri Ashok Mohiley for the Respondents.

3. Various arguments were advanced before us.

The learned counsel for the applicant submitted that the applicant had been working against a regular vacancy and, therefore, his termination of service on account of closure of this Post Office cannot be sustained. However, from the narration of the facts in the Counter Affidavit, we find that Sri Sheo Shanker Shukla, former E.D.D.A., engaged Sri R.P. Tiwari as a substitute of his responsibility, when he was appointed in Group 'D' in I.I.T. Post Office, Kanpur. Therefore, the applicant is found to have worked as a substitute in a number of places and he cannot claim continuous service as a regular appointee.

4. The learned counsel for the applicant has drawn attention to the fact that a number of persons junior to him have been absorbed by the department. He has named S/Sri Rajpal Singh, Vishnu Nath Pandey, Rajbali, Ram Pratap Verma and Vishnu Kumar Divedi in his Transfer Application. The learned counsel for the respondents contests that they were juniors stating that the applicant had no status as an employee engaged by P & T Deptt.,

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because he worked as a substitute. He in this connection relied upon the order in V. Kumar & others Vs. Union of India and others, (1994)

27 A.T.C., 346. We do not find this order as fully applicable to this case in context of what we are going to mention later in this order.

5. The learned counsel for the applicant has relied on the judgment of Allahabad High Court in Vimal Chand Pandey and another Vs. Engineer-in-Chief, Public Works Department and others, 1999 (3), E.S.C. 2297. It has been held in this judgment that the department cannot keep a person as temporary or on daily wage basis for a long period as that would be arbitrary and not justifiable. Again, this judgment of the Allahabad High Court would not be applicable to this case of substitutes, who are appointed on the risk and responsibility of regular incumbents of the posts.

6. However, the fact that the applicant has mentioned names of certain persons who are similarly situated and have been regularised by the respondents and whose names have been given earlier in this order requires consideration by us. The learned counsel for the Respondents states that the persons named by the applicant were substitutes, who had been regularly appointed by the department before closure of the Post Office.

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On a query made by us as to whether they were also engaged as a substitute or not, the learned counsel for the Respondents mentioned that initially they were engaged as a substitute but their engagements were subsequently approved by the department. But the applicant's engagement was never approved by the Respondents and, therefore, the applicant has no right.

7. We do not agree with the proposition that merely because the engagement of the applicant as a substitute was not approved by the department, ^{and that} ~~although~~ the applicant, who was continuously working as a substitute for a number of years should be ignored when comparing his case with other substitutes, who were regularised, because their engagements had been approved by the Respondents. We are of the view that it would not be in the hands of the substitute to get his engagement regularised or approved by the Respondents. The Respondents have not stated as to why the applicants services were not regularised though he had worked for upwards of three years and what differentiated his services from services of others. Mere fact that the Mobile Branch Post Office was running in loss cannot be taken as valid explanation when the services of the applicant at no stage were considered to be unsatisfactory.

8. We, therefore, direct the Respondents to consider the applicant for appointment as an Extra Department Delivery Agent on regular basis.

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in case other substitutes, who had worked for shorter period than the applicant's total period of work as E. D. D. were engaged by the Respondents merely on the ground that the appointments had been approved. The Respondents shall carry out this direction within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs.

Rafiq Uddin

(RAFIQ UDDIN)

JUDICIAL MEMBER

Dayal

(S. DAYAL)

MEMBER (A)

Nath/