

A3
1

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

...

T.A. No. 1765 of 1987

(arising out of writ petition No. 503/85)

Jai Singh

....

Petitioner

vs

Union of India and ors...

Respondents

Hon' Mr P.S. Habeeb Mohamed, A.M.

Hon' Mr J.P. Sharma, J.M.

(By Hon' Mr P.S. Habeeb Mohamed, A.M.)

The petitioner, namely, Jai Singh, Extra Departmental Branch Post Master of Village Patanpur has filed writ petition No. 503 of 1985, in the High Court of Judicature at Allahabad with the prayer for issue of writ, order or direction including a writ in the nature of Certiorari to quash order dated 17-12-84 communicated in order dated 7-1-85 (Annexure-I to the writ petition) and for further issue of a writ, order in the nature of Mandamus to command the respondents not to interfere with the petitioners' functioning as Extra Departmental Branch Post Master (E.D.B.P.M.) and for further incidental orders. This writ petition was transferred under section 29 of the Administrative Tribunals' Act XIII of 1985.

2. The case of the petitioner is that he was appointed as E.D.B.P.M. of Village Patanpur on temporary basis by the respondent no.1 on 21-2-1977. The petitioner does not possess his appointment letter which is alleged to have been lost. He has educational qualifications provided in the rule. One Balakram Singh respondent no.3 who has put off duties earlier had come to the petitioner on 5-1-85 and asked him to handover the charge, but he

b

has not complied with the request of respondent no.3. When the petitioner approached the Deputy Superintendent of Post Offices, he gave him an order on 7-1-85 to hand-over the charge to respondent no.3. The petitioner states that he has a right to continue in the post having done 8 years of continuous service and termination in this ~~the~~ manner in which it has sought to be done is not in accordance with the law.

3. It is seen from the record that the Hon'ble High Court vide order dated 17-1-85 passed an order that no effect shall be given to the impugned order dated 7-1-85 sent by the Dy Superintendent of Post Offices. By a further order dated 16-5-85, the first order passed by the High Court was extended until further orders and accordingly the petitioner-applicant is continuing in service. In the counter filed by the respondents 1 and 2, it is stated that one Shri Balak Ram Singh is working as E.D.B.P.M. at Patanpur, he was put off duty on account of mis-appropriation of fund of Savings Bank Deposit. Departmental proceedings were started against respondent no.3 Balak Ram Singh and it was decided on 17-12-84. The petitioner was working as a substitute on a provisional appointment and no appointment letter has been issued to him. It is stated that there was no application by the petitioner for appointment as E.D.B.P.M. at Patanpur. Since it was a substitute appointment, the petitioner-applicant has no case for continuous in service or for the grant of any relief by the Tribunal as prayed for in the writ petition/transferred application.

4. The respondent 3 has also filed his counter affidavit in which he has stated that he was working as E.D.B.P.M. for 15 years and there was a Departmental Proceedings against him and the charges not being proved against him. He was exonerated in the Departmental

has not complied with the request of respondent no.3. When the petitioner approached the Deputy Superintendent of Post Offices, he gave him an order on 7-1-85 to hand-over the charge to respondent no.3. The petitioner states that he has a right to continue in the post having done 8 years of continuous service and termination in this ~~the~~ manner in which it has sought to be done is not in accordance with the law.

3. It is seen from the record that the Hon'ble High Court vide order dated 17-1-85 passed an order that no effect shall be given to the impugned order dated 7-1-85 sent by the Dy Superintendent of Post Offices. By a further order dated 16-5-85, the first order passed by the High Court was extended until further orders and accordingly the petitioner-applicant is continuing in service. In the counter filed by the respondents 1 and 2, it is stated that one Shri Balak Ram Singh is working as E.D.B.P.M. at Patanpur, he was put off duty on account of mis-appropriation of fund of Savings Bank Deposit. Departmental proceedings were started against respondent no.3 Balak Ram Singh and it was decided on 17-12-84. The petitioner was working as a substitute on a provisional appointment and no appointment letter has been issued to him. It is stated that there was no application by the petitioner for appointment as E.D.B.P.M. at Patanpur. Since it was a substitute appointment, the petitioner-applicant has no case for continuous in service or for the grant of any relief by the Tribunal as prayed for in the writ petition/transferred application.

4. The respondent 3 has also filed his counter affidavit in which he has stated that he was working as E.D.B.P.M. for 15 years and there was a Departmental Proceedings against him and the charges not being proved against him. He was exonerated in the Departmental

proceedings and was directed to assume charge vide order dated 21-5-85. The petitioner/applicant has no right to continue in the post. // We have Perused the documents and heard the arguments advanced on behalf of the parties, we find that the case is fully covered by a decision of the Tribunal in R. Patna-bhan Hair and ors vs. Superintendent of Post Offices and ors A.T.R. 1990(1) C.A.T. 215, in which it has been held that,

" We are fully aware of the modern changing situations and the developments in the industrial jurisprudence and also the expanding trend. In the light of the latest decisions, there is nothing wrong in taking the view that a substitute who was allowed to work in the Post Office continuously as stated in Ground 'A' of the Original Application for more than three years as an employee having all benefits available for a full member is a workman coming within the purview of the Act.

15. Moreover, in the instant case the respondents have treated the petitioner throughout as a full member getting all benefits, privileges and rights available to a full member in the service. Annexure-II shows that the petitioner had been relieved by the respondents from duty after following the procedure of Rule 267 of the Post and Telegraph Financial Handbook Vol.I as if he is a regular employee of the P & T department and hence it is out of place for the respondents now to raise this technical contention and state that the petitioner is not a regular 'workman' and being a substitute not ~~eligible~~ eligible for any of the benefits of such an employee of P & T department. Hence, having regard to the facts and circumstances of the case we are rejecting the contention of the learned counsel for the respondents and we hold that the petitioner is an employee having the benefits and rights of a full member in the service of P & T.

16. In this view of the matters it is unnecessary for us to go into the further question raised by the learned counsel for the petitioner whether he is entitled to the benefits of Section 25-H of the Industrial Disputes Act and we are not dealing with the same in this judgment. "

J

5. We find that the fact that the respondents have taken the stand that there was no appointment order in respect of the petitioner-applicant, does not make any change in the situation. It is undisputed that he has worked for more than 3 years and up to ¹⁰ nearly 8 years. It has been categorically held by the Division Bench of the Tribunal ^{in the case (Supra) where} that a substitute was allowed to work in the Post Office continuously for more than 3 years having all benefits available for a full member is a workman coming within the purview of the Industrial Disputes Act. The Tribunal's stand in respect of the application of Industrial Disputes Act and to the E.D.B.P.M. of the Postal Department is clear from para 8 of the Judgment Supra.

" A seriously contested question which was argued in this case whether Chapter V-A of the Industrial Disputes Act, 1947 applies to P & T. The learned counsel for the respondents, Shri P. Santhalingam contended that P & T has rules and executive orders governing the selection, appointment and other service matter of EDSPM and hence the provision of the Industrial Disputes Act are not applicable. We are not inclined to accept this contention. The Supreme Court has considered the very nature of the Postal Service in its larger concept and held that the Postal Service is really a branch of public service providing service to the citizens subject to the provisions of the Post Office Act and Rules made thereunder. This is made clear from the following decisions such as Union of India v. Amar Singh, Commissioner of Income Tax, Delhi v. M/s P.M. Rathod and Co. and Tria and Co. Ltd v Post Office So, it is also well settled that the P & T is as public oriented service establishment which is constituted for serving the public and the persons serving in it are governed by its Rules either statutory or Executive Regulations and Executive orders. "

6. *The fact that*
Apart from that there was no appointment order as stated by the respondents, there is nothing to show that the full service benefits as applicable to a regular member of the service of EDBPM ^{were} not given to the petitioner.

12

7. In the circumstances, we find that the petitioner has made out a case for granting him the relief he has prayed for in the writ petition/transferred application. The impugned order dated 17.12.84 communicated to the petitioner dated 7/1/85 at Annexure-I is accordingly quashed and the petitioner will continue as E.D.B.P.M. He may be given a suitable posting. However, the respondents 1 and 2 will also pass appropriate order posting respondent 3 suitably. The petition is allowed accordingly with no order as to costs. ^{T.A.} ^b

Domace
MEMBER (J)

(sns)

May 17th, 1990

Allahabad.

MEMBER (A)

PJ 17/5/90