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Reserved

Central Administrative Tribunal, Allahabad Bench, Alld.

Registration C.A. No. 1385 of 1988

Rakesh Gupta

Applicant

Vs.

Superintendent, Post Offices,
Fatehgarh Division,
Farrukhabad and others

Respondents.

Hon. Ajay Johri, AM
Hon. G.S. Sharma, JM

(By Hon'ble Ajay Johri, AM)

By this application received u/s.19 of the Administrative Tribunals Act XIII of 1985 the applicant, who was appointed as Extra Departmental Branch Post Master (for short EDBPM) in the Post Office Kila on 19.2.1985, has challenged an order dated 30.11.1988 issued by the Superintendent Post Offices in connection with the filling of the post of EDBPM Kila on the ground that since the applicant is still working on the post since 19.2.1985, there should be no occasion for the issue of impugned letter of 30.11.1988.

2. The applicant was appointed as EDBPM on the retirement of the regular incumbent on 19.2.1985 by the Inspector of Post Offices after he had furnished the required security along with premium for the same. According to the applicant, his work has been satisfactory and there has been no complaint of any nature against him. He has also said that his services are governed by the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as the Service Rules) and, therefore, his services cannot be terminated arbitrarily without

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complying with the procedures available under Article 311 of the Constitution of India. He has alleged that he has not been given any show cause notice or afforded any opportunity but the respondents have appointed another person by name of P.K.Saxena by an order dated 11.3.1988. Against the said appointment, the applicant had filed an Original Application No.411 of 1988 and the appointment of P.K.Saxena was cancelled by the respondents during the pendency of the application. He has also referred to the circular issued by the Post Master General on 23.2.87 wherein he has said that the employees who have crossed the age limits and have worked in the Department should be given preference in appointments. He has also drawn attention to the fact that rule 6 of the Service Rules provides for termination of service if an employee has not completed service of more than 3 years. But the services cannot be terminated without notice and without following the relevant rules if an employee has completed the service of more than 3 years. In spite of this, the respondents have issued the impugned notice on 30.11.1988 inviting applications for appointment to the post which is presently held by the applicant. Thus, this act of the respondents is illegal and against the provisions of law.

3. The respondents' case is that on the falling vacant of the post of EDBPM Kila due to the retirement of the regular incumbent and since action for regular appointment to this post which was initiated on 20.12.1984 could not be finalised, the applicant who was nephew of the earlier incumbent was engaged as a substitute on an undertaking given by him by which he had agreed that he will not be having any right for the said post. In response to

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the notification of 20.12.1984 one proposal was received from the Employment Exchange but it was not found suitable. The post of readvertised on 28.1.1985 and 4 applications were received in response to the same. One of the applicants was nominated for appointment but since he could not secure suitable accommodation, he could also not be appointed and the vacancy was again advertised on 23.3.1985. In response to this advertisement five offers were received but all the applicants were found not suitable. On 31.1.1986, the Director, Postal Services (for short DPS) Kanpur advised that the post should be advertised again. The post was, therefore, readvertised on 23.2.1986 but as a new policy was under formulation, the appointment process was postponed for the time being. Therefore, the vacancy had to be readvertised on 16.12.1987. The nomination received in response to this advertisement was examined and one of the persons P.K.Saxena was found suitable. He was ordered to be appointed on 11.3.1988. P.K.Saxena's appointment could, however, not be finalised because of representation by the applicant to the DPS on which status quo was ordered by the DPS. Subsequently P.K.Saxena's offer was withdrawn but at the same time, the DPS Kanpur ordered fresh notification to be issued for filling up of the post in a regular manner. It is against this advertisement that the applicant has approached the Tribunal and obtained an ex parte interim order to the effect that no one should be appointed in place of the applicant till further orders. The respondents thus contend that the applicant was never given a regular appointment and he has no right to be retained in the post. The

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respondents have also said that the Service Rules are applicable to those employees only who have been appointed by the competent authority under the relevant provisions of the Service Rules and since the applicant has not been appointed regularly, these rules do not govern him.

4. In his rejoinder the applicant has said that he was not appointed as a substitute as a substitute can only be appointed under rule 5 of the Service Rules and, therefore, the applicant's services cannot be terminated ignoring the relevant rules and without invoking the provisions laid down for termination of service.

5. We have heard learned counsel for the parties. The emphasis laid by the learned counsel for the applicant was on the fact that since the applicant has worked for more than 3½ years, he should be terminated in terms of the rules applicable to the Extra Departmental Agents (for short EDAs) and in terms of rule 6, his service can only be terminated by following relevant provisions in respect of termination of service of EDAs. The applicant was not given any notice and, therefore, his services cannot be terminated. On behalf of the respondents, it was contended that the applicant has not been appointed in a regular measure and he is not covered by the Service Rules. The post has to be filled in a regular manner by following the procedure laid down. The applicant, therefore, is not entitled for any relief.

6. In the counter, annexure CA-1 is an application submitted by the regular incumbent who was going to retire informing the Department that on his own responsibility, he was putting the applicant, who was his nephew, to work as

EDBPM. It was also mentioned in this application that when regular arrangement would be made, the applicant will hand over the charge to the regularly selected person and he will have no right or claim for this post. The applicant has also signed on this application giving an undertaking that he will hand over charge to the regularly selected incumbent. The applicant endorsed this application on 19.2.1985. Thereafter, annexures CA-1, CA-3 and CA-5 to the Counter (Reply) filed by the respondents clearly bring out that this post was advertised. In response to annexure CA-5, an appointment was offered to one P.K.Saxena which was subsequently cancelled. It is also clear that on 27.11.1987, the applicant had sent an application requesting that he may be allowed to work on the vacant post of EDBPM Kila. The applicant has not produced any document to show that after his appointment, which was made by his uncle as indicated in the copy of the application which is filed as annexure CA-1, he was issued any letter indicating that he will be governed by the relevant Service Rules applicable to the ED staff.

7. The method of recruitment of EDAs empowers the Inspector of Post Offices to make appointment in anticipation of the formal approval of the Superintendent of Post Offices. The formal orders are always issued by the Divisional Superintendent. In cases where there are rival claimants, the Inspector of Post Offices is required to obtain the prior approval of the Divisional Superintendent. The appointment order has also to indicate that the EDA will be governed by the Service Rules. The Service Rules also lay down that provisional appointment should not be allowed to continue for indefinite periods and action should be taken by the appointing authority well in time before the retirement of the incumbent to

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select a suitable successor. The provisional appointments are also to be made only for specific periods and it has to be specifically mentioned in the appointment order that the provisional appointee will have no claim for regular appointment. It is also mentioned that efforts should be made to give alternative employment to EDAs who are appointed provisionally and who are subsequently discharged from service due to administrative reasons if at the time of discharge they have put in not less than 3 years service.

8. There is no dispute about the fact that the applicant has been allowed to continue to work as EDBPM of Kila Post Office for more than 3 years. It is also clear that he has, in terms of the rules, furnished the security as required and he was authorised to handle cash and valuables. It was argued before us that since the applicant was only a substitute, he is not governed by the Service Rules which apply only to the regular employees. Under rule 5(1) of the Service Rules, an EDA during his leave can arrange for his work being carried out by a substitute who has to be a person approved by an authority competent to sanction leave to the EDAs. The choice of the substitute was originally left to the EDA himself and normally, such substitutes have to be approved in advance by the competent authority. The rules also lay down that in such cases, the EDAs have to undertake the responsibility of the work of the substitute and for the actions of the substitute, and, in this background it was not considered necessary to get any security from the substitutes. All these instructions apply in cases where an EDA proceeds on leave or is appointed to some other regular departmental post and the post ^{vacant} by him has to be looked after. But these orders make it clear that for the action

of the substitute, who is so appointed, the EDA himself has to take the responsibility. The copy of the undertaking filed by the respondents shows that these instructions were accepted even in the case of the applicant though the person who introduced the applicant as a substitute was not proceeding on leave nor was he being appointed to any other job but he was proceeding on retirement, in which case the appointment of the substitute should not have been accepted as has been done in this case.

9. In his application the applicant has in para 4(b) said that he furnished the required security of Rs.2500 for each year separately along with premium for the same and even the security for the year 1989 has been furnished by him in Dec. 1988. Looking into the facts and circumstances of the case, i.e., that the applicant is continuing in service for more than three years; that he has been furnishing security along with premiums regularly; that the person who appointed him is no more in service, it cannot be said that any other person ^{keeping} is now responsible for the actions of the applicant and the provisions made in the Service Rules that the respondents have to make efforts to give alternative employment to EDAs who are appointed provisionally and subsequently discharged from service due to administrative reasons, in view, we find that the applicant's case cannot be disposed of on the simple assumption that he was only a substitute and, therefore, he is not entitled to any relief. The fact also remains that the applicant was not regularly appointed and, therefore, he has no claim for being considered for regularisation by virtue of his having been continued on the post.

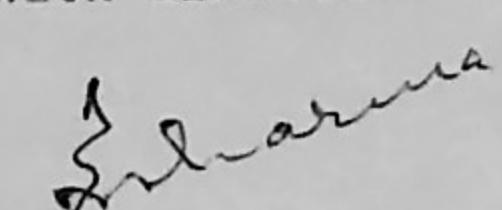
10. In view of the above, we do not think that the applicant has been able to make out a case for invoking our

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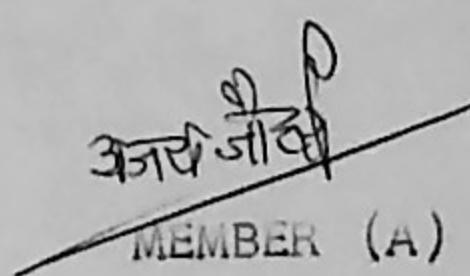
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interference in the action being taken by the respondents to fill up the post in regular manner and for restraining the respondents from making any fresh appointment to the post. But we feel that the applicant will be entitled to be considered under the provisions of para 9 of the Recruitment Rules which are applicable to the provisionally appointed EDAs and, therefore, while rejecting this application, we direct that the respondents would keep the name of the applicant in the waiting list of EDAs discharged from service and consider him for future absorption in terms of the rules on the subject. The applicant's case may also be considered for regularisation along with others who apply for the post as a result of the advertisement, which may be issued by the respondents for regular filling up of the post.

11. The application is disposed of in the above terms with direction that the parties will bear their own costs



MEMBER (J)


31/1/89

MEMBER (A)

Dated: 25.2.1989
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