

Central Administrative Tribunal, Allahabad.

Registration O.A.No.43 of 1988

Triveni Dutt Sharma ... Applicant.

Vs.

Post Master General U.P.
and 4 others Respondents.

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

(By Hon. G.S.Sharma, JM)

In this petition under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant who was working as Extra Departmental Branch Post Master (for short EDBPM) in the Post Office Naithla Hasanpur in district Bulandshahr, has prayed that he be reinstated on his post and his appointment be regularised and for a direction to the respondent nos. 3 and 4 not to allow the respondent no.5 to work as EDBPM Naithla Hasanpur.

2. It is alleged by the applicant that he is graduate ^{and eligible} and is fully entitled for his regular appointment as EDBPM. Formerly, one Yagya Dutt Sharma was working as EDBPM Naithla Hasanpur and on his superannuation w.e.f. 23.12.1986, the applicant took over there as EDBPM from the outgoing EDBPM Yagya Dutt Sharma on 1.1.1987 and since then, he was sincerely and efficiently discharging his duties of this post as there has not been any selection for the post of EDBPM and no other person was appointed on this post. On 21.4.1987, a requisition was sent to the Employment Exchange Bulandshahr by the Superintendent of Post Offices, respondent no.3 to sponsor the names of the ^{candidates} ~~applicants~~ for appointment as EDBPM and the applicant had also sent his application for the said post. On 27.12.1987, the father of the applicant

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made a complaint to the respondent no.3 against the corrupt practices of Sub Divisional Inspector (for short SDI) Bulandshahr- respondent no.4 for his demanding Rs.10,000 as illegal gratification for making the regular appointment of the applicant as EDBPM and on his failure to extract the money, about his device to appoint the respondent no.5 in place of the applicant on adhoc basis. On 23.12.1987, the applicant received the letter dated 15.12.1987 of the respondent no.4 informing him that his working arrangement was cancelled on 9.12.1987 and he was required to hand over charge of his post to the respondent no.5. The grievance of the applicant is that he was discharging his duties honestly and efficiently and only on account of personal reasons and ulterior motive the respondent no.5 was appointed in his place and as no regular appointment of the EDBPM was made till then, there could be no appointment of another adhoc employee in his place and he having served the department for a year was entitled to continue on his post and is also entitled to get his appointment regularised.

3. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the respondent no.3, it has been stated that the former EDBPM Yagya Dutt Sharma had not retired w.e.f. 23.12.1986 but in contemplation of a departmental action, he was put off duty vide letter dated 23.12.1986, copy annexure CA-3, and only subsequently he was retired vide memo dated 24.3.1987, copy annexure CA-4. Instead of handing over the charge to the concerned man, the outgoing EDBPM had handed over the charge of his duties to the applicant on his own

accord on 1.1.1987 and he irregularly worked on his post upto 8.12.1987. On his inspection on 23.11.1987, the respondent no.4 noticed some irregularities in the Naithla Hasanpur Post Office and on his report, the Divisional Superintendent vide his letter dated 4.12.1987, copy annexure CA-5, directed the respondent no.4 to get the charge of the applicant transferred to Extra Departmental Post Man and this was complied with on 8.12.1987. The applicant was never appointed as EDBPM by the respondents and he has no locus-standi to file this petition. The action of the applicant in taking over charge from the outgoing EDBPM is illegal and without jurisdiction. As the regular appointment of the EDBPM was being proposed and in public interest it was necessary to remove the applicant from his charge, under a working arrangement the respondent no.5 was entrusted with the duties of the EDBPM. The appointing authority of EDBPM is the Superintendent of Post Offices and the SDI has nothing to do in such appointments. The allegations made by the applicant against the SDI- respondent no.4 are, therefore, false and motivated. Further, the respondent no.5 is a regular Extra Departmental employee of the Department and the charge of the Post Office Naithla Hasanpur has been given to him on a stop gap arrangement and the applicant has no cause of action to challenge the same.

4. In his rejoinder, the applicant admitted the fact that former EDBPM Yagya Dutta Sharma had not retired w.e.f. 23.12.1986 but was ~~re~~^{He} fited on 2.4.1987. ~~but~~ took a somersault on the point of his taking over the charge from him and it was stated by him that on 1.1.1987 the charge was handed over to the applicant under the orders of the Superintendent of Post Offices and he had not taken over

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charge direct from the outgoing EDBPM. The applicant was granted leave during the period of his tenure as EDBPM by the Department and the working arrangement made by him during his leave period was also approved and he was thus regularly appointed by the Department on his post and had a right to continue till the regular appointment is made.

5. The short point arising for determination in this case is whether the applicant had any right to continue on the post of EDBPM Naithla Hasanpur till the regular appointment of someone was made on this post. The applicant has not filed any letter of his appointment as EDBPM in any capacity. In para 6.3 of his petition, it was clearly stated by him that on 1.1.1987, the applicant took charge of the post of EDBPM from the outgoing EDBPM Yagya Dutt Sharma who had since retired. This contention of the applicant is not correct as admitted by him later on in his rejoinder. Yagya Dutt Sharma had not retired by that time and actually he was put off duty and had retired only subsequently on 2.4.1987. Under the service rules of Extra Departmental Agents, an ED agent can make temporary arrangement of his duties by appointing some substitute in his place to discharge his duties. Thus from the allegations made by the applicant in his claim petition, it follows that the applicant was given the charge of the post of EDBPM Naithla Hasanpur by the outgoing EDBPM at his own instance and there was no order of the Postal Department to hand over the charge of the duties of the EDBPM to the applicant. The allegation of the applicant to the contrary in his rejoinder is an afterthought and is not correct. The applicant has not filed any document in support of this allegation. He has placed his reliance on annexures

R-10 and 11, which go to show that the SDI granted leave to the applicant from 17.3.1987 to 24.3.1987 and then from 25.3.1987 to 31.3.1987 and in his place his father Mahabir Prasad Sharma was appointed as EDBPM on his nomination. The respondents have not denied the fact that from 1.1.1987 to 8.12.1987 he had worked as EDBPM Naithla Hasanpur and he received pay for the period he worked as such and was granted leave and the appointment of substitute nominated or suggested by him was made *this is, however, not sufficient* *I will not go* to infer that he was appointed as EDBPM by the Postal Department and his mere working on that post on stop gap arrangement will not confer on him any right in the absence of regular appointment.

6. The allegation of corruption made by the applicant against the SDI has been denied by the respondent no.3. It further appears that the SDI is not the appointing authority of the EDBPM and the respondent no. 5 was already working in the Department from before as regular ED Agent and as such, it is difficult to believe that the applicant was removed from his post on his not obliging the SDI by making the payment demanded by him. It appears from the own allegation of the applicant that he was relieved of his duties on 8.12.1982 and the complaint made by his father subsequently on 27.12.1987 against the SDI was of no consequence and it could also be motivated.

7. Having carefully considered the case of the applicant, we find that the applicant had no right to continue on the post of EDBPM Naithla Hasanpur and without the regular selection, he is also not entitled

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to get his appointment regularised. He is, therefore, not entitled to any relief and his petition merits dismissal.

8. The petition is accordingly dismissed without any order as to costs.

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MEMBER (A)

द.शर्मा

MEMBER (J)

Dated: 18th Apr 1988
k.k.b.