

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE <sup>18</sup>28 DAY OF AUGUST, 1995

Original Application No. 944 of 1988

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAS GUPTA, MEMBER(A)

Nirbhay Shanker Mishra, s/o Sri Krishnanand Mishra  
r/o village Umarchha, Post office Birbhanpur, district  
Jaunpur. ....Applicant

BY ADVOCATE SHRI P.N. TRIPATHI

VERSUS

1. Supdt. of Post Offices, Jaunpur Division  
Jaunpur.
2. Sub. Divisional Inspector(P) Central Jaunpur
3. The District Employment Officer, Jaunpur  
.....Respondents

BY ADVOCATE SHRI AMIT STHALEKAR

Order(reserved)

JUSTICE B.C. SAKSENA, V.C

We have heard the learned counsels for the parties. Through this O.A, the applicant challenges the validity of advertisement dated 14/18.7.88 issued by the District Employment Officer, Jaunpur by which application for employment as Extra Departmental Delivery Agent have been called for. The only ground for challenging the said advertisement is that the applicant holds the said post and there is no vacancy which can be filled up.

The applicant's case is that he is a graduate and as such he is qualified for appointment to the post of Extra Departmental Delivery Agent in the Postal Department. He applied for appointment in the post office at Birbhanpur. He was selected and appointed as E.D.D.A Birbhanpur Branch post office.



3. The respondents have filed their counter affidavit in which they have indicated that since the **services** of EDDA Birbhanpur Branch Post office was terminated from service, as such a requisition was sent to the Employment Exchange, Jaunpur for sponsoring the candidature of eligible candidates through a letter dated 27.9.86. In response to the same, the list of eligible candidates including the name of Shri Shobh Nath Pal as well as the name of the applicant was received from the Employment Officer, Jaunpur. After scrutiny of all the applications of eligible candidates Sri Shobh Nath Pal was appointed on the post of EDDA, Birbhanpur vide order dated 10.3.87. It has further been indicated that the candidature of the applicant was discarded on the ground that he was a resident of Brahmanpur post office, Sarai Harkhoo, Jaunpur and not of the village for which the post was to be filled up. It is pleaded that in the list of eligible candidates, the Employment Officer had indicated that the applicant is the resident of village Umarchha post office, Birbhanpur due to wrong information furnished by the applicant to the Employment Exchange. It is the further case of the respondents that Shri Shobh Nath Pal joined on 19.8.87 and worked till 21.8.87 and thereafter he did not turn up for his duties and as such the applicant was given chance to work on the said post on the responsibility of one Shri K.N.Mishra Mail Overseer, ~~and~~ father of the applicant. It has also been indicated that one Shri Sanjay Kumar Singh has already been appointed pursuant to the advertisement and ~~is~~ working on the post of EDDA. Sri Sanjay Kumar Singh has not been impleaded as a respondent. In the



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Rejoinder affidavit the applicant only challenges that the appointment of Sanjay Kumar Singh is illegal and is subject to the final decision of the present O.A. <sup>the</sup> This plea has been taken perhaps by ~~xxx~~ reason of/fact that at the time of admission of OA an interim order was passed to the effect that if any appointment is made, it would be subject to the decision of the petition. In the rejoinder the applicant <sup>has</sup> /~~xx~~ not disputed the averment made in the counter affidavit that the applicant was appointed as a Substitute on the responsibility of his father.

4. Shri Amit Sthalekar, learned counsel for the respondents has placed before us copy of a letter dated 16.8.95 addressed to him and sent by the Sub Divisional Inspector, Post Offices, Sub-Division, Jaunpur. enclosed thereto <sup>was</sup> /a copy of a letter dated 29.8.87 addressed to the Inspector of Post Offices Central in which Krishnanand Mishra Overseer had taken responsibility of the applicant. This letter was shown to the learned counsel for the applicant and he did not dispute its correctness.

5. Learned counsel for the applicant submitted that Annexure 1 dated 1.10.87 is the appointment letter of the applicant. It no where indicates that the applicant is being appointed as a Substitute EDDA on the responsibility of the applicant's father. A perusal of the said appointment letter shows that it clearly stipulated that the appointment was purely a temporary arrangement and shall be terminated at any time without

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assigning any reason.

6. The learned counsel for the applicant cited before us a decision of a Division Bench of <sup>Allahabad</sup> Central Administrative Tribunal dated 27.4.93 in OA 156/92 Om Prakash Bind Vs. Union of India and Ors. From the facts of the said case it appears that the applicant therein had also been engaged as a Substitute and he continued to work for some three years and thereafter the respondents appointed one Kamla Shanker Yadav who had rendered 12 years of service and the services came to an end against the person in place of whom he was working was reinstated and he was to be provided a job and as no person was holding the charge at the post office he was given appointment and the applicant's services were terminated. In the said case it was observed that since the applicant therein had worked for 3 years, there appears no reason as to why his case for alternative appointment could not be considered. In case it is possible to accommodate Kamla Shanker Yadav elsewhere and the applicant at this very place, the same can also be done but the applicant's case for consideration will be in view of the work and experience gained by him. The learned counsel for the applicant urged that a similar observation and direction be issued in this case. In the first place the said direction has no binding effect. It does not lay down any principle of law. In the present case admittedly, the applicant has not been working since after the appointment of Sanjay Kumar Singh made in the year 1988. He has already worked as EDDA Birbhanpur post office for the last about 7 years. The applicant was only working as a Substitute on the responsibility undertaken by his father. No legal rights accrues to the applicant to claim to be a regular appointee. The

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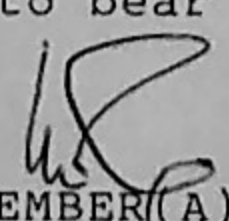


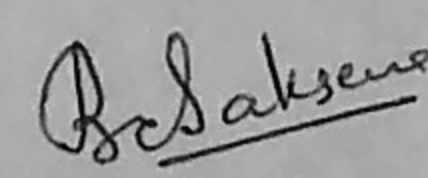
The advertisement issued for filling up the posts cannot be faulted. Sanjay Kumar Singh has not been impleaded as respondent and for this reason it is not possible to enter into the validity of the appointment of Sanjay Kumar. As a matter of fact except for a bald plea that it was illegal taken in the rejoinder no facts to support the plea or grounds have been indicated. The learned counsel for the applicant further sought to question the decision which is indicated in the counter affidavit to have been taken for rejecting the applicant's candidature when the selection took place in 1987.

7. As noted hereinabove, it was indicated in the counter that the applicant is not a resident of the village concerned, that is a stale matter <sup>and cannot</sup> be reopened in this O.A. This OA is directed against an advertisement issued to fill up the post afresh. The decision cited by the learned counsel for the applicant viz AIR 1970 Supreme Court 422 A.V.S. Narsimha Rao Vs. The State of Andhra Pradesh. The said decision for the reason indicated hereinafter, need not be considered. It is not relevant for our purpose. The said decision was considering the validity of Section 3 of the Public Employment (Requirement of Resident Act 1957 and Rule framed there under). No analogous provision is the subject matter of the present O.A nor any such ground has been raised in the OA.

8. On the basis of the discussion hereinabove, the OA lacks merit and it is accordingly dismissed.

Parties to bear their own costs.

  
MEMBER (A)

  
VICE CHAIRMAN

Dated: 28<sup>th</sup> August, 1995