

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH (Lokpal)

Allahabad this the 31st day of Jan. 1996.

Original Application No. 1013 of 1989.

Hon'ble Dr. R.K. Saxena, Jt.  
Hon'ble Mr. S. Doyal, A.O.

Mahesh Chandra S/o Banshidhar,  
R/o Debkhera P.O. Debkhera,  
Tehsil Tundla, District Firozabad.

..... Applicant.

C/A Sri Anand Kumar

Versus

Union of India through Secretary,  
M/o Postal and Telecommunication  
New Delhi. and others.

..... Respondents.

S/R Sri N.B. Singh

O R D E R

Hon'ble Dr. R.K. Saxena, Jt

The applicant has approached the Tribunal by way of this O.A. under Section 19 of the Administrative Tribunal Act 1985. He has challenged the legality and sought quashment of the order dated 27.4.89 (Annexure - 6), whereby the services of the applicant were intimated to have been terminated on 12.4.89.

2. The brief facts of the case as are set out in the O.A. as well as in the counter reply are that one Sh. Ashoke Kumar Sharma was working as Extra-Departmental-Delivery-Agent at Debkhera Branch Office of District AGPS. The disciplinary inquiry was ordered against him and he was therefore put off the duty <sup>b</sup> wide letter dated 6.10.80 (Annexure-1) to the counter affiveit. The Sub-Post-Master-Debkhera was directed to get

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somebody engaged temporarily in place of Sh. A.K. Sharma. As a result of the said direction, the applicant was engaged with effect from 9.10.80 on the responsibility of the Sub Post Master Debkheda. The undertaking given by Sub Post Master is Annexure-2 attached to the counter affidavit.

3. The contention of the applicant is that he was given appointment and started doing work since 9.10.80 on the basis of <sup>of charge report</sup> the selection. He filed the copy <sup>of charge report</sup> Annexure-I of O.A. Charge <sup>said</sup> Report. It is again <sup>said</sup> that permanent vacancies of EDDA were <sup>were</sup> advertised on 2.1.82 and the applicant had again applied for permanent selection. He was however, selected and made permanent vide order dated 13.12.87 Annexure-3. According to him his services with effect from 9.10.80 were also taken into consideration. The applicant claims to have become entitled for further promotion to the post of Post Man for which examination was going to be held. The applicant had applied for the said post of Post Man and he was issued call letter dated 12.4.89 Annexure-4. It is contended that the respondents were interested in the appointment of Sh. Ashok Kumar Sharma and therefore the services of the applicant were terminated and the permission which was granted to appear in the test for the post of Post-Man was withdrawn vide letter dated 27.4.89 Annexure - 6. The applicant challenges the termination of the services on the ground that no notice was given to him. It is further claimed that he had worked for more than 240 days and thus the provision of Industrial Disputes Act and U.P. Industrial Disputes Act were fully applicable. Thus this O.A. with the reliefs, <sup>as</sup> mentioned above, has been filed.

4. The case has been contested by the respondent and it is disclosed that the applicant was a substitute to Sh. Ashok Kumar Sharma against whom disciplinary proceedings were started and he was put off the duties. It is averred that the appointment of the applicant as substitute was clear from Annexure-I and the undertaking given by the Sub-Post-Master through

Annexure-2. The letter of appointment dated 13.12.87 was issued erroneously and the said letter was a nullity. It is pointed out on behalf of the respondent that Sh. Ashok Kumar Sharma in whose place the applicant was working, was exonerated of the charges in the disciplinary proceedings and he was reinstated on the post where the applicant was working. Since the applicant was engaged only as a substitute and since Sh. Ashok Kumar Sharma was reinstated, the services of the applicant were terminated. It is also asserted that the applicant had never applied against the post of Extra Departmental Delivery Agent. The issuance of advertisement as mentioned in Annexure-2 in compilation No. 2 by the applicant, has also been disputed. In the alternative it is averred that even if the advertisement was made that was never issued with the intention of regular appointment had to be made because there was only one post which was held by Sh. Ashok Kumar Sharma and since he was put off the duty, the substitute was appointed. It is also the case of the respondent that the applicant was a substitute <sup>and a</sup> not regular employee and thus there was no necessity of having been given any notice before termination. In the end it is contended that the applicant was not entitled for any relief.

5. The applicant has filed rejoinder in which the same facts which were taken in the O.A., have been reiterated. He has laid emphasis on the advertisement dated 2.1.82 and took the plea that because he was selected, he has become permanent. It is again said that his services were terminated only to accommodate Sh. Ashok Kumar Sharma. As regards the issuance of the appointment letter dated 13.12.87, the applicant has taken the plea of estoppel against the respondents. It is also averred that there is no rule of temporary appointment being made.

6. We have heard the learned counsel for the applicant and the respondents and have perused the record.

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7. In this case, the main question for determination is as to how the applicant got a berth in the department. No doubt the applicant has come with the plea that some vacancies of EDDA had occurred and the applicant was selected and joined the services on 9.10.80. This fact has been strongly refuted by the respondents. They have come with the story that Sh. Ashok Kumar Sharma, <sup>an</sup> regular employee, was working from before and because the disciplinary proceedings were started against him and he was put off duty, the other man was directed to be engaged temporarily in his place. In support of this contention Annexure-I has been brought on record. This order Annexure-I to CA makes it ample clear that Sh. Ashok Kumar Sharma was working and the vacancy had arisen because of the said Sh. Ashok Kumar Sharma having been put off the duties. At S.No. 3 of Annexure-I of CA, there is a note that another person may be engaged in place of Sh. Ashok Kumar Sharma. It is, therefore, incorrect on <sup>the</sup> part of the applicant to say that selection had taken place for the post of ~~Post~~ <sup>Sub</sup> Master and the applicant was finally selected. Annexure-2 to the CA further indicates that this applicant was taken and engaged in place of Sh. Ashok Kumar Sharma on the undertaking of the Sub Post Master Debkhena. Had it been proper selection, the applications of other candidates and the names from the employment exchange as is the rule, would have been invited. Thus we come to the conclusion that the applicant got berth in the department because Sh. Ashok Kumar Sharma was put off <sup>the</sup> duties, and the authority to engage any other person temporarily was given to Sub Post Master Debkhena.

8. The applicant has also come with the case that the advertisement for filling in ~~the~~ one vacancy of EDDA was notified on 5.2.82 and the applications in the prescribed proforma were invited. He has filed the said note as Annexure-2 of

the O.A. He further contends that he had applied in response thereto, and he was selected as a result of which appointment letter Annexure-3 to the O.A. was issued on 13.12.67. The respondents, on the other hand, denied the issuance of any such notification. In the alternative, it is also contended that even if any notification was issued it was not legal, as the proper procedure of the recruitment or selection was not followed. Moreover, there was no vacancy available in the said Post Office Debkheda. It appears that the applicant as well as the respondents have given conflicting facts on this point. The question therefore, arises for determination if there was any vacancy, the applications were invited and the applicant was selected through the procedure prescribed thereto. It is averred on behalf of the respondents that there was only one post on which Sh. Ashok Kumar Sharma was working. Since he was facing disciplinary inquiry and was put off duty, the applicant was appointed as substitute.

So long as the proceedings were <sup>not</sup> finalised against Sh. Ashok Kumar Sharma and he was <sup>not</sup> removed from services, there was no cause of occurrence of vacancy in the said Sub Post Office Debkheda. This fact has not been controverted by the applicant. It is therefore, clear that there was no vacancy available at the time when the notification is said to have been issued and the applicant had submitted his application.

9. The method of recruitment has been incorporated in Section III in the Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department. According to these rules, the appointment can be made either as substitute or on provisional basis. The procedure which is required to be followed is given in Para 14 of the said rules. It enjoins that the employment of EDD Agents should be made through Employment Exchange by sending a requisition to the

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local Employment Exchange requesting nomination of the suitable candidates for the post. In case no nominations are received from the Employment Exchange within the stipulated period of 30 days or if any of the candidates sponsored by the Employment Exchange is not found suitable as per prescribed conditions of eligibility, it would be open to <sup>the</sup> competent recruitment authority to make selections from other channels i.e. by inviting applications. This procedure has been followed or not, has not been pointed out by the applicant. In order to establish that the applicant was legally selected and appointed, it was obligatory to have established that his name was sponsored by the Employment Exchange along with other persons. If the applicant was the sole candidate and any authority had given appointment letter in violation of the mandatory rules, the said appointment cannot be said to be legal and valid. The contention of the learned counsel for the respondents, that there was no selection at all, finds credence when we look to the Para 13 of the rules which prescribed stringent conditions for making provisional appointments. It clearly lays down that provisional appointment should not be made in the case of retirement and that such appointments should be made for a specific period. It further says that where ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalised, a provisional appointment may be made in the form given in Annexure(B). It further speaks that it should be made clear to the provisional appointed person that if ever it is decided to reinstate the terminated incumbent, the provisional appointment will be terminated and he shall have no claim to any appointment. When we scrutinise the facts through these



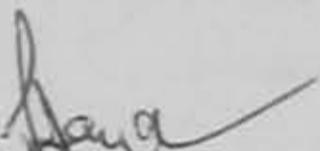
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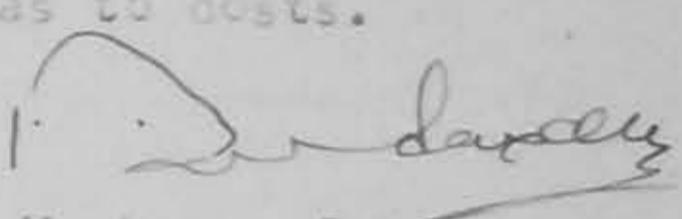
provisions laid down in Para 13 and 14 of the Service Rules for Extra Departmental Staff, we find that the conditions which were prescribed, were not observed. In such a situation even if the applicant got any appointment letter as disclosed in Annexure-3 dated 13.12.87, it gives no legal right because his entry which was allowed in the department was as that of a substitute and then he manœuvred to obtain a letter of appointment, which was not ~~the~~ result of any valid selection. Therefore, the applicant cannot take shelter behind the said letter Annexure-3.

10. It is also contended that the applicant was allowed to appear in the written test for the post of Post Man. What appears from the pleadings of the parties particularly of the respondent is that only those persons who were regular appointees as EDDA, are eligible to apply for the post of Post Man. It ~~was for this reason that~~ <sup>is clear that since</sup> Sh. Abhok Kumar Sharma was reinstated, the services of the applicant ~~came~~ to an end, and thus he remains no more eligible for the post of Post Man. Any way, this fact that the applicant had worked for a sufficiently long period as a substitute cannot be ignored. Such contingency was stipulated in Sub Para 2 of Para 13 of the rules where it is provided that efforts should be made to give alternative employment to ED Agents who are appointed provisional and subsequently discharged from services due to administrative reasons, if at the time of discharge they have put in not less than three years service. It is further provided that in such cases their name should be included in the waiting list of ED Agents discharged from services. In our opinion the name of the applicant should be kept in the waiting list and he may be allowed an opportunity to be taken as EDDA as and when the vacancy arises.

ii. The applicant also claims the benefit of the provisions of Industrial Disputes Act and U.P. Industrial Disputes Act. His contention is that since he has worked for more than 240 days and neither any notice was given nor was given any ~~penalty for infringement~~ <sup>compensation for replacement</sup>, the order suffers from illegality. We are unable to accept this contention for the simple reason that the applicant was engaged as a substitute as is provided under the Service Rules for Extra Departmental Staff. The Rules also provide that the substitute shall be removed as and when the holder of the post comes back. Since the applicant was engaged as substitute under these rules, he cannot claim benefit of the provisions either of the Industrial Disputes Act (Central Act) or of U.P. Industrial Disputes Act.

12. In view of the facts and circumstances as disclosed above we are of the view that there is no merit in the O.A. which is dismissed. No order as to costs.

  
Member - A

  
Member - J

Arvind.