

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD  
OA No.404/1994

Kamlesh Kumar Bharti  
EDDA, Para  
Branch Post Office-Ghazipur .. Applicant

versus

Union of India, through  
1. Superintendent of Post Offices,  
Ghazipur  
2. Sub-Divisional Inspector, Post Office  
Central Sub-Division, Ghazipur  
Mohammadabad and Yusufpur Sub-Division  
District Ghazipur .. Respondents

Counsel

1. Sri A.B.L. Srivastava, for the applicant
2. Sri A. Sthalekar, for the respondents

CORUM:

Hon'ble Dr. R.K. Saxena - Judicial Member  
Hon'ble Mr. D.S.Baweja - Administrative Member

Dated: October 31, 1995

JUDGEMENT

By Hon'ble Dr. R.K. Saxena

This OA has been filed challenging the order of termination of the services of the applicant.

2. The brief facts of the case as emerged from the proceedings of the parties are that in the Branch Post Office of Para situated in District Ghazipur was working one Mr. Mohd. Kamil as Extra Departmental Delivery Agent(EDDA in short). He fell ill and died on 10.8.92 and his son Mohd. Tasir was temporarily engaged on the vacant post of EDDA on 10.8.92. He worked upto 31.12.92. Thereafter, the applicant was temporarily engaged to work as EDDA as a substitute on 1.1.93. The contention of the applicant is that he was appointed by the competent authority after following the procedure prescribed therein and after ascertaining of fact that

the applicant fulfilled all the conditions of eligibility. He, however, worked on provisional and temporary basis. It was made clear to him that his services were <sup>liable</sup> to be terminated without assigning any reason. He was relieved of his post on 19.2.94. The applicant, therefore, challenges the impugned order on the ground that the order of termination was issued by an officer who was holding concurrent charge of the post of sub-Divisional Inspector(Posts) and was not competent to pass the said order. It is also pleaded that the termination order was passed without giving any notice or pay in lieu thereof, and also without explaining the governmental interest in doing so. It is, therefore, prayed that impugned order be quashed and to allow the applicant <sup>to</sup> continue on the post of EDDA.

3. The contention of the respondents, on the other hand, is that the applicant was engaged temporarily to work as <sup>2</sup> EDDA as a substitute and at the risk and responsibility of one Shri Salabi Ram, EDMP. It is further averred that since the applicant was not regularly appointed on the post of <sup>3</sup> EDDA, the order of termination of his service without assigning any reason, was passed. It is also pointed out that <sup>2</sup> neither the appointment of the applicant was made on regular basis nor were applications invited for the said post. It is also denied that the said post, which <sup>2</sup> had <sup>c</sup> fallen vacant because of the death of Mohd. Kamil, was meant for SC/ST candidates and thus there was no ground for the applicant having been given preferential treatment. It is also asserted that the sub-Divisional Inspector,

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Ghazipur was holding the current charge of the Division and he was fully empowered to exercise power of the appointing authority.

4. the applicant also filed a rejoinder reiterating the facts which were mentioned in the OA. Besides, it is alleged that the respondents failed to disclose as to why service of Mohd. Tasir, s/o Mohd. Kamil was terminated on 31.12.92 and again recommended for his appointment on compassionate ground on 18.5.93. The applicant in the rejoinder also denied the averments of the respondents that he (applicant) was engaged as a substitute at the risk and responsibility of EDMP. According to his contention, his appointment was provisionally made after the service of Mohd. Tasir was terminated on his being found ineligible to hold the post. It was reiterated that the order of termination of the service of the applicant was illegal and invalid.

5. We have heard the learned counsel for the parties and have perused the record.

6. There are certain facts which were ~~not~~ challenged. According to these facts, it is urged that one Mohd. Kamil was working as EDA in Para branch Post Office and he died on 10.8.92. It is also emerged that soon after the death of Mohd. Kamil, his son Mohd. Tasir was given the appointment on 10.8.92 and he worked till 31.12.92. It is also an admitted fact that thereafter the applicant was given the appointment with effect from 1.1.93 on the post which fell vacant because of the demise of Mohd. Kamil. It is really ~~not~~ understandable and

remains unexplained from the side of the respondents as to why Mohd. Tasir who was the son of late Mohd. Kamil was appointed soon after the death of his father on 10.8.92 and why his service was terminated on 31.12.92. It appears from the contents in the counter reply that the matter was referred to the Chief Post Master General for relaxation of some essential qualification which could make Mohd. Tasir eligible for appointment. It is not explained what that qualification was.

7. It is also transpired that the applicant was appointed on the post of EDDA with effect from 1.1.93. The contention of the applicant is that he was appointed regularly whereas the contention of the respondents is <sup>that</sup> he was appointed as a substitute. Before we come to the conclusion if the applicant was appointed as a substitute or on regular basis, we would like to go through the different procedures which are given in the appointment of EDDA. For this purpose, we have gone through the book <sup>called</sup> swamy's compilation of service rules for extra departmental staff in postal department, 6th edition published in 1995. The term "EDA" has been defined to mean several persons holding different posts such as sub-postmaster, Branch- postmaster, delivery agent, mail-peon, packer, chowkidar etc. However, the post of extra-departmental delivery agent is also included therein. The appointing authority of the posts has been prescribed in Schedule III, after rule 5, which deals with <sup>leave and is followed by</sup> the instructions issued by the Director General dealing with the subject of leave. <sup>are given and</sup> It is clear that any EDA who wanted to go on leave, was permitted to give any person as a substitute and this

arrangement had worked satisfactorily for sufficiently a long period. It further appears from the reading of these instructions that the department had no role to play in the appointment of substitute. The only thing which was required was to call for the security and to give approval. In this way, two things emerge from the reading of the instructions about <sup>e</sup> ~~is~~ the appointment of substitute. The first thing is that a person who has given somebody as substitute <sup>e</sup> ~~may not~~ <sup>must</sup> be serving the department. <sup>e</sup> Second thing is that it is the choice of the <sup>e</sup> ED/A to nominate any person as his substitute during the leave period. The responsibility <sup>e</sup> of the misdeeds of the substitute will clearly fall on the concerned ED/A. Looking from this angle, the contention of the respondents that the applicant was appointed as substitute, does not appear correct for the reason that Mohd. Kamil <sup>e</sup> ~~was~~ no more alive. <sup>e</sup> ~~But~~ The correct <sup>e</sup> ~~reason~~ <sup>position</sup> is that Mohd. Tasir, s/o Mohd. Kamil was given appointment and it was after the termination of the service of Mohd. Tasir that the applicant was given appointment. In this way, the appointment of the applicant can not be said to be an appointment as substitute.

8. The provisional appointment of ED/A has been prescribed in the <sup>e</sup> ~~so-called~~ <sup>of the said book of</sup> Swamy's compilation. In fact, section III deals with the method of recruitment <sup>e</sup> at page 76 of the book. <sup>e</sup> ~~It gives~~ <sup>deals with the</sup> provisional appointment of ED/A. The scope of making provisional appointment is made clear by laying down that it can be possible only when the posts are being allowed to continue for an indefinite period and when regular appointments are not

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<sup>readily</sup>  
~~rightly~~ possible. One note of clarification appearing at page 78 of the book makes it clear that provisional appointment be made through employment exchange and in accordance with the instructions contained in the letter No.45-22/71-SPB.1/Pen dated 4.9.1982. It is further explained at page 79 in para 14 that the concerned recruiting authority should send the requisition to the local employment exchange for nominating suitable candidates for the post having the prescribed qualification, within a period of 30 days from the date of sending the requisition to the employment exchange. In the event that no-nominations are <sup>not</sup> received from the employment exchange regarding the candidates within the stipulated period of 30 days or if any of the candidates as sponsored by the employment exchange is not found suitable as per the prescribed condition of eligibility, it would be open to the competent recruiting authority to make selection from other applicants in accordance with the existing procedure. In this way, even for provisional appointment, names are required to be called from employment exchange. In this case, no doubt the respondents have come with different versions because at one place it was averred that the appointment of the applicant was made as a substitute but at other place it <sup>was</sup> also pointed out that the appointment was <sup>on</sup> provisional basis. It has not been made clear as to whether the names of the candidates were obtained from employment exchange or if the names were sponsored by the employment exchange within the stipulated period of time or the candidates lacked the requisite qualification, <sup>or</sup> the selection was made by giving due publicity and then selected the applicant. It appears that the appointment

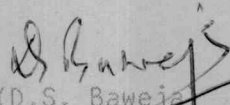
of the applicant was made arbitrarily. The contention of the learned counsel for the applicant on the other hand is that the presumption should be that the appointment was made after following the due procedure. We are unable to agree with this view. The facts and circumstances here indicate that the appointment of the applicant was <sup>not</sup> made according to the prescribed procedure.

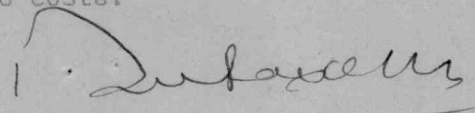
9. It is not in dispute that the applicant was appointed on 1.1.93 and his service came to an end on 18.2.94 as is disclosed by the respondents in para 7 of the counter reply. <sup>way</sup> In this, he worked for about 414 days. the question for consideration therefore arises if the service of the person who had worked for more than 240 days even <sup>if</sup> his appointment was irregular, <sup>it</sup> could be terminated without giving any notice or <sup>made</sup> without the <sup>with giving</sup> compliance of the procedure prescribed under Section 25F of the Industrial Disputes Act. In the case of Kandas vs. UOI & ors. [(1994)27-ATC-11] the Division <sup>&</sup> Bench of Jodhpur of Central Administrative Tribunal held that Post office is an industry. The department of telecommunication was also held as an industry in the case of Tapan Kumar Saha vs. GM, Calcutta telephone (1981-Lab.I>C>(NCC)68) and Sarabhai Chemicals Vs. Subhash Pandya (1984(49)FLR-244). In view of the <sup>decision</sup> ~~position~~ of the different Benches of the Central Administrative Tribunal and this decision having not been reversed, it becomes clear that the post office is an industry and particularly <sup>the employee</sup> EDDA who had worked for more than 240 days, may be placed in the category of workman. <sup>&</sup> In view of section 25B and 25F of the ID Act,

1947, the service of workman can not be dispensed with or in other words he can not be retrenched without giving notice or one month's pay in lieu thereof, and also compensation as is stipulated therein. The respondents nowhere averred that any notice or one month's pay in lieu of notice and the compensation of retrenchment was given or paid to the applicant. The result <sup>is</sup> therefore, <sup>is</sup> that even on holding the appointment of the applicant as irregular and treating him only a casual labour, his service can not be terminated without adopting the prescribed legal procedure. Judging from this angle, the impugned order of termination of service can not be upheld.

10. The learned counsel for the applicant has moved an application that Shri R.S. Yadava who had filed the counter-reply in this case, committed an offence of false information <sup>and by attempting to</sup> influence the Tribunal by giving incorrect facts. He has also filed a copy of the counter-reply which was filed in OA No.1036/93-Mohd. Tasir Vs. UOI & ors. We have given careful thought to this <sup>fact</sup>. As a matter of fact without <sup>giving an opportunity to explain the</sup> contradictory statements by way of giving counter-affidavits <sup>is</sup> as pointed out, <sup>it would not be prop. to proceed with</sup> it was <sup>required</sup> expected to have given an opportunity to the concerned person to testify as to which of the two versions <sup>is</sup> correct. Since the applicant had not <sup>come</sup> with that prayer and Shri Yadava had no opportunity to explain the circumstances, we do not propose to proceed with the matter any further.

11. In view of the facts and circumstances of the case, as are discussed above, we are of the view that the impugned order of termination of service of the applicant, cannot be sustained in law and therefore the impugned order is quashed and set aside. The OA is disposed of accordingly. No order as to costs.

  
(D.S. Baweja)  
Member (A)

  
(R.K. Saxena)  
Member (J)

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