

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD

ALLAHABAD : This the 25th day of January, 1996.

ORIGINAL APPLICATION No. 920 of 1994

Hon'ble Mr T.L.Verma, Member-J  
Hon'ble Mr D.S.Baweja, Member-A

Nand Lal s/o Sri Ram Bali a/a 25 years,  
r/o Village Pharsar, Post Pharsar,  
Tehsil Gola, District Gorakhpur

..... Applicant.

C/A Sri R.K.Tewari

Versus

1. Union of India through the Secretary,  
Ministry of Communication,  
Government of India, New Delhi.
2. Post Master General,  
Gorakhpur Region, Gorakhpur.
3. The Sub-Divisional Inspector,  
Post Offices Kauri Ram Sub Division,  
Kauri Ram, District Gorakhpur.
4. Sri Manoj Kumar Mishra s/o Late Sri Purshottam Mishra,  
r/o village and post Baripur, District Gorakhpur.

..... Respondents.

C/R Sri C.S.Singh

ORDER (Oral)

By Hon'ble Mr T.L.Verma, Member-J

In this application order dated 30.4.1994 appointing  
the respondent No.3 as Extra Departmental Agent, Pharsar,  
District-Gorakhpur has been challenged.

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2. Shri Jata Shanker EDDA Pharsar retired on 31.1.94 on  
attaining the age of superannuation. The applicant, Sri Nand

Lal, was appointed on the said post on 22.2.94 on the risk and responsibility of Sri Narvdeswar Tiwari, B.P.A Pharsar. It is stated that appointing authority's requisitioned names of suitable persons from the Local Employment Exchange for appointment on the said post on regular basis. The name of the applicant alongwith others is stated to have been sponsored by the Employment Exchange. The respondents, it is alleged, instead of making selection of suitable person from among the names recommended by Employment Exchange, terminated the services of the applicant and in his place and appointed respondent No. 4 Sri M.K. Mishra as Extra Departmental Agent by impugned order dated 30.4.94. The applicant has, therefore, filed this application for quashing appointment order dated 30.4.94 and issuing a direction to the respondents to allow the applicant to continue in service on the post of EDDA, Pharsar, District Gorakhpur with all consequential benefits.

3. The respondents have contested the claim of the applicant in the CA filed on their behalf, it has been stated that the applicant was appointed on the said post as stop gap arrangement pending appointment on regular basis. It has been further stated that Sri M.K. Mishra, the respondent No. 4 has been appointed on the vacant post of EDDA Pharsar on compassionate ground and that the substituted appointment of the applicant on the joining of the permanent incumbent automatically came to an end. The applicant has, therefore, no cause of action of this application.

4. We have heard learned counsels for the parties and perused the record.

5. The appointment of the applicant on the post of EDDA Pharsar was stop gap arrangement is fully established

by Annexure A-7 and A-6 respectively. It is settled law that a substitute does not acquire any right to hold the post. Such a substitute therefore, has to make way for the regular appointee.

6. The averments made in counter-affidavit clearly indicate that Sri M.K.Mishra, whose application for appointment on compassionate ground was pending, at <sup>the</sup> ~~a~~ time ad-hoc arrangement, by appointing the applicant on the post of EDDA Pharsar, was made. The case of the respondent No. 4 for appointment on compassionate ground was subsequently approved by the Chief Postal General of U.P.Circle, Lucknow by relaxing recruitment rules by order dated 13.9.93. He was appointed on the vacant post <sup>of</sup> EDDA Pharsar under S.D.I.Gorakhpur letter dated 30.4.94. The applicant though created problem in making overcharge, the respondent No. 4 assumed charge of the post on 30.5.94 and that he has been working on the said post since then.

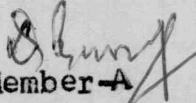
7. The pleadings and the Annexure on the record leave no room for doubt that the appointment of the applicant on the post of EDDA Pharsar was purely temporary and ad-hoc in nature and that the respondent No. 4 has been appointed on the said post on compassionate ground. It has not been denied by the applicant in the rejoinder-affidavit that the applicant has been appointed on compassionate ground. The only objection of the applicant to the appointment is that he does not belong to the village where the post office is located. It was submitted that according to the instruction ~~issued relating to~~ <sup>pertaining to</sup> recruitment on the post of EDDA the candidate should be a resident of the place where the post office is located. It was argued that since the appointment was in violation of the aforesaid instructions, the same is not valid and should be set aside. We are unable to agree with this argument. The

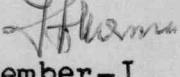
instructions provide that the EDDA agents, EDS, SPM, EDM Mail Carriers, Stock Recurrence, Stock Mail Peon, as far as possible should reside in or near place of their work. The applicant, admittedly, is resident of a place 60 Km. away from the place of his work. From the language of the instructions it is clear, ~~suggest~~ that the requirement of the residence of EDDA is not mandatory in nature. Therefore, appointment of a person, who does not reside at or near the place of his work, can not be said to be in contravention of the instruction. <sup>that apart</sup> The authority competent for making appointment on compassionate ground has relaxed the recruitment rule while appointing the applicant as EDDA Pharsar. We, therefore, find nothing wrong with the appointment of the applicant as EDDA Pharsar on compassionate ground.

8. The learned counsel for the applicant next argued that the applicant has submitted representation to the post Master General, Gorakhpur for his appointment as EDDA in Khajani Tehsil. It was also submitted that the respondent No. 4, is not working on the said post and that the post is lying vacant. The learned counsel for the applicant, therefore, urged that the applicant who has held the post as substitute should, therefore, be directed to be appointed. The learned counsel for the respondents refuted the aforesaid contention of the learned counsel for the applicant and submitted that the respondent No. 4 is still working on the post of EDDA Pharsar. We have nothing before us to support the contention of the applicant that respondent No. 4 is not working on the said post.

9. In the facts and circumstances of the case discussed above, we are of the view that the applicant has no right to hold the post of EDDA Pharsar. Therefore, the relief

claimed in the OA cannot be allowed. This application, therefore, deserves to be dismissed and the same is accordingly dismissed. While ~~participating~~ with the <sup>case</sup> application, we may like mention that in the event the representation of the respondent No. 4 is allowed and he is transferred to the place of his choice and the post of EDDA Pharsar falls vacant the claim of the applicant for appointment on the said post shall be considered by the respondents alongwith others in accordance with rules. Therefore, there will be no order as to cost.

  
Member-A

  
Member-J

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