

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 381 of 1995

Allahabad this the 25/1 day of January 1996

Hon'ble Dr. R.K. Saxena, J ud. Member
Hon'ble Mr. S. Dayal, Admn Member

Jagatdhari Yadav S/o Sri Pursottam, E.D.D.A., Post Office Pipraon, Tahsil Meja, District Allahabad.

APPLICANT.

By Advocate Sri R.P. Singh.

Versus

1. Union of India through the Director General (Post) Dak Bhawan, New Delhi;
2. Senior Superintendent of Post Offices, Allahabad Division, Allahabad.
3. Sub Divisional Inspector (Post), Meja, Allahabad.
4. The Post Master Pipraon, Meja, Allahabad.

RESPONDENTS.

By Advocate Sri S.C. Tripathi

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J.)

The applicant has approached the Tribunal seeking the quashment of the orders dated 04.4.95 (annexure A-1) and 06.5.94 (annexure A-4).

2. The brief facts of the case are that one Ramji Yadav was previously working as Extra Departmental Delivery Agent (herein after referred as E.D.D.A.) in the Post Office Pipraon, Meja, District Allahabad,

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and since Ramji Yadav was appointed as outsider Postman in Head Post Office, Allahabad, the applicant was appointed in place of Ramji Yadav and was working w.e.f. 01.8.84. It is contended that except for the brief period from 10.5.94 to 14.5.94, the applicant worked throughout as E.D.D.A. as is mentioned in the certificate(annexure A-3) which was issued by Sri Rang Lal Dwivedi, Branch Post Master, Pipraon. He also tried to establish this fact by filing the copy of the charge certificate (annexure A-2).

3. It appears from the pleadings of the applicant that an order dated 04.4.95(annexure A-1) was passed by the Sub-Divisional-Inspector by directing the Branch Post Master, Pipraon to relieve the applicant with immediate effect and the charge should be given to Ramji Yadav. Further direction was that if Ramji Yadav failed to discharge the duties, he (Branch Postmaster) was allowed to appoint any person fulfilling the qualifications of the post on his own responsibility. The contention of the applicant is that since he was working and Ramji Yadav had not joined at Pipraon, the impugned order (annexure A-1) could not be passed and he could not be relieved of duties. Hence, this O.A..

4. The respondents contested the case on several grounds. It has been averred that Ramji Yadav was appointed as E.D.D.A., Pipraon on 15/3/80 but, since he had proceeded on leave, this applicant worked in the absence of Ramji Yadav as his substitute. Sri Ramji Yadav made a request to work as Outsider Postman Head Postoffice, Allahabad City and because

Sri Ramji Yadav was permitted to work on the said post, he brought the applicant as his substitute on his own risk and responsibility. It was made clear to the applicant that he would not be entitled for any claim to the said post because he was a substitute. On 01.10.1987, Ramji Yadav resumed his duty as E.D.D.A. Pipraon, the applicant was removed. Again Sri Ramji Yadav misbehaved with the staff and the Manager, Speed Post Centre, Allahabad, he was relieved therefrom on 03.2.95. After an inquiry was held, Sri Ramji Yadav was put off duty on 08.4.95 and consequently the applicant was also discharged because he was officiating in place of Ramji Yadav. It is further claimed that one ^{appointed to} Sri O.P. Dubey was officiated as substitute on the responsibility of Sri Rang Lal Dwivedi, Extra Departmental Branch Post Master. The contention of the respondents is that the applicant was not ~~duey~~ appointed by the competent authority namely Sub Divisional Inspector (Posts), and Ramji Yadav had not joined the substantive post, it was for this reason that the Extra Departmental Branch Post Master, Pipraon was directed about the applicant being relieved. It is also averred that Ramji Yadav too was never appointed as Departmental Postman and he had worked as an Outsider against the post of Postman, and thus, the applicant did not ^{acquire} require any right to continue on the post. The respondents claim that the certificate(annexure A-3) which was given by Rang Lal Dwivedi to the applicant, was completely incorrect and false because Rang Lal Dwivedi was himself appointed on 03.8.87 and thus, he could not issue the said certificate(ann. A-3) to the applicant for the period starting from 01.8.84.

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It is again pointed out that when Ramji Yadav was relieved from the post, the applicant who was a substitute of Ramji Yadav, could not continue on the post of E.D.D.A. Anyway, the O.A. is claimed to be misconceived and liable to rejection.

5. The applicant filed rejoinder, reiterating the facts which were mentioned in the O.A. In addition, it is averred that the respondent no.4 after serving the copy of the order dated 26.4.95, allowed his own son aged nine years to work as substitute of another person who was himself working as substitute. In this way, it is urged that the respondent no.4 had not followed proper procedure and he wanted to absorb his son who was minor and incompetent to hold the post.

6. The respondents filed reply to the rejoinder through the affidavit of one Shyam Dhari and denied the contents of rejoinder. Most of the facts are the same which have been mentioned in the counter-reply.

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

8. The admitted facts in the case are that one Ramji Yadav was working as E.D.D.A., Pipraon and when he was given posting as Outsider Postman, Head Post Office, Allahabad, the applicant was given appointment at Post Office, Pipraon. The claim of the applicant is that he was working in the said capacity of E.D.D.A. from 01.8.84 and continued till the impugned order except ^{with} a break of few days from 10.5.94 to 14.5.94 as

is disclosed in annexure A-3. The contention of the respondents, on the other hand, is that Ramji Yadav was appointed as E.D.D.A., Pipraon on 15.3.80 and since Sri Ramji Yadav had requested to work as Outsider Postman in the Head Post Office, Allahabad City, he was permitted to do so. It is further averred that in the vacancy caused by ^{the} shifting of Ramji Yadav, the applicant was engaged as substitute of Ramji Yadav and on his security from 01.10.1987. Before we deal with this situation as to when the applicant was appointed, we would like to make a survey of the rules which are connected with the appointment independently or as substitute to any other E.D.D.A. already working. The service rules for Extra Departmental Staff in Postal Department are given in the book written by Muthuswamy and Brinda. The sixth edition of 1995 of this book is before us. In this book, the method of recruitment is described in Section III of the book at page 67. We have given a close reading to the rules and administrative directions as regards the appointment. Rules 12 to 17 are dealing with the appointment and procedure of selection. Rule 12 provides appointment of E.D.B.P.M. by Inspectors. Since, it is not a case of E.D.B.P.M., we are not going in the details of the Rule. Rule 13 deals with the provisional appointment of E.D. Agent. In view of this rule, the provisional appointments to the E.D. Posts are allowed only when the vacancies are caused by the retirement of the E.D. Agents and ^{then} such provisional appointment should be made for a specific period. The provisional appointment can also be made when E.D.A. is put off duty pending departmental or judicial proceedings

against him, and it is not possible to ascertain the period by which such proceedings are likely to be finalised. The provisional appointment can also be made to fill the vacancy caused by the dismissal/removal of an E.D.Agent and the dismissed or removed employee has not exhausted all channels of appeal. Rule 14 speaks about the regular recruitment of E.D.Aagents and through Employment Exchange. Rule 15 speaks about intimations to candidate sponsored by the Employment Exchange. Thus, the sum and substance of these rules is that the appointment of E.D.D.A. can be made either provisionally or regularly but, the conditions prescribed therein and procedure described, should be followed. Admittedly, the appointment of the applicant in the present case was neither provisional nor regular as disclosed above. The respondents have come with a case that the applicant was appointed as substitute of Ramji Yadav as and when he (Ramji Yadav) went on leave. Now, the question arises as to how and when the appointment as substitute is made. Rule 5 of the aforesaid rules deals with leave. It nowhere speaks about the appointment of a substitute. The instructions issued by Director-General are, however, appended below this rule and these instructions deal with the appointment as substitute. According to these instructions, ^{the} every E.D.Agent is required to arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him. Such approval is required to obtain in writing. These instructions further make it clear that whenever an E.D.A. is appointed

against a regular departmental post, such as postman, packer etc., in such cases, it would not be correct for the E.D.A. to be considered as being on leave. If the vacancy in the regular post against which he is appointed is for a short duration, only then he may provide his own substitute. If, however, the E.D.A. is appointed to a regular departmental post for an indefinite period and there is no likelihood of his returning as E.D.Agent, then the Appointing Authority should make arrangements to fill up the post of E.D.Agent in the normal manner by calling for applications. In this way, the position of a substitute has been described under rules.

9. The respondents have brought a file relating to the applicant. It appears to be a skeleton file because neither there is any index nor any official noting. The first paper which is marked as 1/C is the application of Ramki Yadav making a prayer of his being posted as Postman in Allahabad City Post Office. The reason given is that the post was lying vacant. In this application, it is nowhere mentioned that he was proceeding on leave from the post of E.D.D.A., Pipraon. What appears from the language of the application is that he wanted a fresh and regular appointment at Allahabad City Post Office. Since, the applicant was not going on leave, the question of his appointing any substitute did not arise. The instructions of Director General under Rule 5 of E.D.D.A. Rules, as are discussed above, do not

apply in this case. We had already discussed the appointment which is made either provisionally or ~~on a~~ ^{on a} ~~against~~ ^{basis} ~~post~~. Those provisions are also not attracted because the applicant was not appointed after following the prescribed procedure. The conclusion, therefore, is that the applicant was appointed in violation of all the rules and the instructions of Director-General. It has been contended on behalf of the applicant that he was appointed on 1.8.84 and continued to work till the impugned order dated 4.4.95 (Annexure A-1). He has filed the copy of charge certificate (annexure A-2) to establish that he was working since 01.8.84 and has also filed one certificate(annexure A-3) issued by Sri Rang Lal Dwivedi Branch Post Master to the effect that the applicant was working continuously from 01.8.84 except with the break from 10.5.94 to 14.5.94 but, thereafter(meaning thereby from 15.5.94) he again worked. This certificate has been assailed by the respondents on the ground that Sri Rang Lal Dwivedi himself joined as Branch Post Master in 1987 and, therefore, he was incompetent to issue the certificate for the period started from 01.8.84. The certificate cannot be belied simply on the ground that it was issued by a person who came in service subsequently. The certificate is generally issued on the basis of the record kept in the office. There is no averment on behalf of the respondents that such record was not available. Thus, there appears not much weight in the contention of the learned counsel for the respondents.

10. The question, however, arises if the applicant who was appointed as E.D.D.A. either in thepg.9/-

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year 1984 or in the year 1987, has acquired any right of holding the post. We have already discussed that the appointment of the applicant was not made by following any procedure as was prescribed under the rules. Thus, his appointment was illegal and in our opinion, he does not acquire any right.

11. It has been contended on behalf of the applicant that the respondent no.4 has appointed his own son aged about 9 years on the place where the applicant was working after the impugned order dated 04.4.95(annexure A-1) was received. This fact has not been categorically and ~~assertively~~ ^{assertably} denied by the respondents. As a matter of fact, the respondent no.4 should have filed the counter-affidavit himself because an allegation was levelled against him but, he did not choose to file any counter-affidavit. In these circumstances, the allegation levelled against the respondent no.4 appears to be correct. It further indicates that how the appointments are being made arbitrarily and the procedure of appointment on substitution, ~~being~~ has been distorted. It further indicates that the exploitation of innocent persons is being made in the name of employment by substitution. Anyway, we hold the view that the appointment of nine year's son of the respondent no. 4 be cancelled and proper inquiry against the respondent no.4 be made by the department.

12. ⁸ ~~The~~ Any point which arises for consideration is, that if the applicant can get any relief from

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the Tribunal. If his contention that he was working since 01.8.1984 is taken to be true, he worked for about 11 years, and even if, the the contention of the respondents that the applicant started working since 1987 is accepted, he worked for about 8 years but, as a person, who was not appointed legally and in accordance with the rules. Such situation has been dealt with in the instruction of the Director General, and it has been laid down that a person who has worked for sufficiently longer period, should be given preference in future employment. We, therefore, direct the respondents that the applicant, if otherwise eligible, should be given preference for future appointment as E.D.D.A. If, age comes in the way, the relaxation should be given because he had already worked for about 8 or 11 years. With these directions, the O.A. is disposed of. No order as to costs.

Hend
MEMBER (A)

I. Darbari
MEMBER (J)

/M.M./