

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 1st day of November, 2000

Original Application No.807 of 1995

CORAM :-

Hon'ble Mr. Rafiuddin, J.M.

Hon'ble Mr. S. Biswas, A.M.

1. Sri Pawan Kumar Tripathi,
S/o Late Sri Bal Krishna Tripathi,
R/o 34/24, Bengali Mohol, Kanpur.
2. Sri Arun Kumar Yadav,
S/o Sri Jai Narain Yadav,
R/o 64/132, Gadaraya Mohal,
Kanpur,

(Sri Upendra Nath, Advocate)

..... Applicant

Versus

1. Chief Post Master,
Head Post Office,
Kanpur.
2. Director Postal Services,
Head Post Office Building,
Kanpur.
3. The Union of India
Through the Chief Post Master General,
U.P. Circle, Hazratganj.

(Km. Sadhna Srivastava, Advocate)

..... Respondents

ORDER (Oral)

By Hon'ble Mr. Rafiuddin, J.M.

It may be stated at the outset that the learned counsel for the applicant has not pressed the case of applicant no.2 Sri Pawan Kumar.

2. The applicants seek a direction to be issued to the respondents to consider ^{NOT} ~~their~~ case for reappointment at the ED posts of E.D. Packer or any other vacant Group 'D' post in the office of the Chief Post Master General, Kanpur (respondent no.1). The applicants also seek a direction to the respondents to grant ^{them} preference

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and other benefits for ~~their~~ having already rendered 682 days ~~and 856 days~~ contiguous service, respectively as as E.D. in the respondent department, even if their names ^{were} not sponsored by the Employment Exchange. The applicants also seek~~s~~ a direction that ^{the} they be retained as ED employees and granted all other benefits.

3. The applicant no.1, Sri Pawan Kumar Tripathi, was posted to work as substitute in place of Shri Awadesh Kumar Tripathi, who was working as EDA, Kanpur Head Post Office and was on leave during the period 18-11-1991 to 13-7-1992, 13-11-1992 to 19-7-1994 and thereafter from 18-8-94 to 21-12-1994 when ~~the aforesaid~~ Sri Awadesh Kumar Tripathi was on leave. Applicant No.1 worked as substitute in terms of Rule 5 of EDA(Conduct & Service) Rules, 1968, (hereinafter referred to as Rules for short).

4. The applicant No.2 Sri Arun Kumar Yadav also worked as a substitute in place of Sri Mustaq Ali Khan, EDA, Kanpur Head Office, who was on leave during the period from 18-11-1991 to 13-7-1992, 31-8-1992 to 13-11-1992 and from 7-9-1993 to 19-7-1994.

5. The case of the applicant is that their services have been terminated w.e.f. 21-12-1994 and 19-7-1994 respectively by the respondents without any prior show cause notice. It is further stated that 5 posts of EDA are lying vacant in the Head Office Kanpur, which respondent no.1 is going to fill up in the month of August, 1995 for which the list of candidates have been forwarded/sponsored by the Employment Exchange, Kanpur. The name of the applicants is also registered with the Employment Exchange but their names have not been sponsored. The applicants are eligible to be appointed on the ED post and their work and conduct as ED employees during the aforesaid period has been very good and appreciated.

6. The applicants' case in short is that they submitted their application on 25-5-1995 and 27-5-1995 to the respondent no.1 for appointment and continuing of their services as ED employees. But respondent no.1 expressed his helplessness in the matter because the names of the applicants were not sponsored by Employment Exchange, Kanpur and, therefore, no order was passed on their application. The applicants' names could not be considered for appointment merely because their names have not been sponsored by the Employment Exchange, in view of the decision of the Apex Court in the case of Hargoal. It is also stated that the applicants have worked for a long period and conferred temporary status and, therefore, their services cannot be dispensed with without following legal procedure.

7. We have heard counsel for both sides.

8. It is an admitted case of the applicant that they were working as substitute of regular ED employees. There is also no dispute that the appointment and service conditions of EDA employees are governed by rules. We do not find any force in the contention of the learned counsel for the applicant that while working as substitute for a long period the applicants ^{acquired} conferred temporary status as regular ED employees because they were not working as ad hoc employees. Even the post of ED employees is not a regular post and their services are governed by rules. Therefore, the applicants cannot claim any benefit given to the regular employees of the respondents.

9. It also appears that when the names of the applicants were not sponsored by the Employment Exchange, the applicants did not submit their application for appointment as ED at the time of selection and representations were made

by them only after the selection was over and that too for their regularisation on the post on which they were working as substitute. It has been brought to our notice by the learned counsel for the respondents that the mandatory requirement of sponsoring names of the applicants by Employment Exchange was dispensed with after the judgement of the Apex Court in the case reported in 1996 SC(L&S) 1145, whereas in the present case the selection was held in 1995. In other words, it has been contended by the learned counsel for the respondents that at the relevant time the application of such candidates was to be considered whose names were sponsored by the concerned Employment Exchange. Besides, it is not the case of the applicant that any application was submitted by them at the time of selection of the ED post by the respondents. Therefore, the applicants have failed to make out any case for considering their names at the time of selection for ED post held by the respondents. It is also pertinent to mention that the applicant no.1 Sri Pawan Kumar Tripathi while accepting to work as substitute had given an undertaking that he would not claim regularisation on the post he was working on 3-5-1994 a copy of which has been annexed as Annexure-CA-1. 10. Learned counsel for the applicant has also not been able to show us any provision under the rules providing regularisation of the services of the substitutes. Learned counsel for the applicant has drawn our attention to the instructions contained in various letters of the DGP&T, which have been printed in Suamy's Service Rules of ED Staff. Below Rule 5, which provides that the appointing authority should ensure that substitute is not allowed to work indefinitely and if absence from duty of regular ED Agent is likely to last indefinitely, the appointing

authority should be given memo. to make regular appointment and the person so appointed need not be from the substitute. This instruction is not of any help to the applicant because the substitutes who have been permitted to work indefinitely cannot claim regularisation on the basis of this instruction. Since provisions for appointment of regular ED are contained in rules, therefore, a substitute, in our opinion, is also required to appear in the regular selection and if he is otherwise found fit, he can be appointed regularly but there is no provision for giving any benefit to such substitutes at the time of regular selection.

11. The applicants have not been able to make their case for regularisation or appointment as regular ED employees. However, considering the facts of the case that the applicants have worked for a considerable long time as ED substitute of regular ED employees, the respondents are directed to consider their case in the next selection as and when vacancy arises sympathetically if they are found otherwise fit for selection. With this observation, the OA is disposed of with no order as to costs.

S. Bala, Dhivya
Member (A) Member (J)

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