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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 4th day of July, 2001.

CORAM :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Maj. Gen. K.K. Srivastava, A.M.

Original Application No. 96 of 1995.

Hari Om Sharma a/a 24 years, S/o Shri Indra Pal Sharma
R/o Vill. Rajpur, Distt. Etah.

.....Applicant

Counsel for the applicant :- Sri Rakesh Verma

V E R S U S

1. Union of India through the Secretary,
M/o Communication, New Delhi.
2. Post Master, Etah Head Post Office, Etah-207001.
3. Asstt. Post Master (Mail), Etah Head Post Office,
Etah- 207001.


.....Respondents

Counsel for the respondents :- Km. Sadhna Srivastava

O R D E R (Oral)

(By Hon'ble Maj. Gen. K.K. Srivastava, Member- A.)

In this application under section 19 of the Administrative Tribunal's Act, 1985, applicant has challenged the order dated 02.12.1994 (annexure-1) relieving the petitioner from the post of Extra Departmental Stamp Vendor (E.D.S.V) and has prayed that the respondent No.2 may be directed to re-engage the petitioner on the same post.



2. The facts in brief are that one Sri Mahesh Chandra was working as E.D.S.V in the Head Post Office, Etah on regular basis. He was appointed orderly and in a resultant vacancy one Sri Akhilesh Kumar Saxena was engaged as E.D.S.V on the responsibility of the regular incumbant Sri Mahesh Chandra. The substitute Sri A.K. Saxena committed mis-conduct and was relieved by order dated 01.10.1993. In his place, the Post Master, Etah Head Post Office appointed the applicant as E.D.S.V. The applicant worked on the post from 01.10.1993 to 01.12.1994. By order dated 02.12.1994/^{of} Assistant Post Master (Mail) Etah Head Post Office, applicant was ordered to handover the charge to Miss. Shashi Prabha on the responsibility of Sri Mahesh Chandra, regular incumbant. This has resulted in to the present controversy.

2. We have heard Sri Rakesh Verma, learned counsel for the applicant and Km. ^{for} Sadhna Srivastava, learned counsel for the respondents and have perused the record.

3. Learned counsel for the applicant has submitted that the order dt. 02.12.1994 (annexure A- 1) is illegal as a substitute can not be replaced by another substitute. There was no complaint about the work and conduct of the applicant during the period he worked as E.D.S.V and, therefore, removing him from the post of E.D.S.V is un-^{for}justified and irregular. Sri Rakesh Verma, learned counsel for the applicant has also submitted that the applicant was appointed by Sri V.K. Saraswat, the then Post Master, Etah Head Post Office and obviously he had taken responsibility of the applicant and the order is passed on wrong facts.

4. Learned counsel for the respondents has contested the case mainly on the ground that the applicant

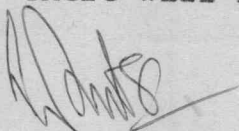
was engaged purely on temporary basis on the under-taking given by the regular incumbent Sri Mahesh Chandra as averred in the counter reply. The second submission of the learned counsel for the respondents is that as per rules (5) of the EDAs (Conduct and Service) Rules, 1964, the Post Master has no authority to pass the order of such appointment and to take the responsibility in respect of any substitute. It is only the regular incumbent who can give under-taking and take the responsibility for the substitute. She further submitted that since the work and conduct of the applicant was not to the satisfaction of the regular incumbent Sri Mahesh Chandra, he withdrew his guarantee and proposed Km. Shashi Prabha, his daughter, to be engaged in place of the applicant.

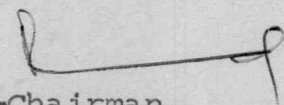
5. We have considered the submissions of the counsel for the parties. The argument of the learned counsel for the applicant ^{he} is that the applicant was appointed by the Post Master vide order dated 01.10.1993 and he can not be removed even when the regular incumbent had withdrawn the guarantee in favour of applicant. does not hold good in the eyes of law. It has also been submitted that the applicant was working on the responsibility of Postmaster. This argument has no force for two reasons firstly, there is nothing on record to prove that the Postmaster, Etah had given guarantee for the work and conduct of the applicant and secondly he has no right to do so. The contention of the learned counsel for the applicant is that substitute can not be replaced by another substitute is probably based on the decisions of Superior Courts that an adhoc can not be replaced by another adhoc. This argument will not hold good as engagement of a substitute in Department of Post has a special significance. As per rule-5 of EDAs

(Conduct and Service) Rules, 1964, a substitute can be appointed only on the guarantee of the regular incumbent and when Sri Mahesh Chandra, the regular incumbent withdrew his guarantee, the applicant not being regular selectee had no right to continue on the post of EDSV in Etah Head Post Office. The action of the respondents in removing the applicant from the post of EDSV and appointing Km. Shashi Prabha on the post on the responsibility of Sri Mahesh Chandra, the regular incumbent, is fully justified and legal.

6. In view of the above observation, we have no reason to interfere. Accordingly the OA is dismissed.

There will be no order as to costs.


Member- A.


Vice-Chairman.

/Anand/