

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1092/1995

WEDNESDAY, THIS THE 11TH DAY OF DECEMBER, 2002

HON'BLE MR. GOVINDAN S. TAMPI .. MEMBER (A)

HON'BLE MR. A.K. BHATNAGAR .. MEMBER (J)

Surendra Kumar,
aged about 31½ years,
S/o Sri Saraswati Prasad Yadav,
R/o House No.21, National Highway No.28,
Transport Nagar, Gorakhpur,
Ex-Casual Labour/Motor Driver
(Temporary Status),
O/o the Senior Superintendent Post Office,
Gorakhpur Division,
District : Gorakhpur. ... Applicant

(By Advocate Shri A. Tripathi)

Versus

1. Union of India through
the Secretary,
Department of Posts,
Ministry of Communication,
Government of India,
Dak Bhawan, New Delhi - 110 001.
2. Post Master General,
Gorakhpur Region,
Gorakhpur.
3. Senior Superintendent Post Offices,
Gorakhpur Division,
Gorakhpur. ... Respondents

(By Advocate Ms. Sadhna Srivastava)

O R D E R

Hon'ble Mr. Govindan S. Tampi, Member (A) :

Continuation in service as a Group 'D' official with temporary status with consequential benefits and regularisation in turn in that cadre and thereafter in future vacancy as a Driver are the reliefs claimed in this O.A.

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2. Heard Shri A. Tripathi, learned counsel for the applicant and Ms. Sadhna Srivastava for respondents.

3. To state the facts in brief, the applicant, Shri Surendra Kumar, was engaged by Respondent No.3 (Senior Superintendent, Post Offices, Gorakhpur Division, Gorakhpur), on 3.10.1989 in From Room. Thereafter, as the regular Drivers attached to the office were removed, he was asked to work as Jeep Driver on casual arrangement, as he possessed the Driving Licence. The applicant had become entitled for conferment of temporary status as he had completed the requisite period and the same was granted on 24.7.1991. The applicant continued to work as the casual labourer with temporary status while performing the duties of the Driver. The applicant also requested for being considered for posting as a Driver, but, the same did not succeed. From 1.3.1994 to 11.3.1994 and thereafter upto 4.4.1994, he was on leave including medical leave. On his return, he was not given the job. But, on 15.4.1994, Respondent No.3, issued the impugned letter giving him his leave salary for 120 days, after excluding 23 days/taken and dispensed with his services. Thus, he has been denied his post in Group 'D' as well as the post he was holding as Driver. Hence, this O.A.

4. The grounds raised in this O.A. are that:-

- a) the applicant having acquired temporary status could not be dis-engaged when there was work;
- b) having completed three years of service after acquiring temporary status, he could not be dealt with under the temporary service rules;
- c) no notice had been served on him before terminating services;

d) he was entitled for regularisation in his turn, when vacancies arose in Group 'D'.

In the above circumstances, the O.A. deserves to be accepted, pleads the applicant. Shri A. Tripathi, appearing on behalf of the applicant, forcefully reiterates the above pleadings.

5. Strongly rebutting the plea raised by the applicant, respondents, in their written pleadings, presented through their counsel Ms. S. Srivastava, that in the office of the respondent one post of Driver has been sanctioned where one Shri Jagannath Chaudhary was appointed, but, he was replaced by one Hari Shanker Tiwari, as the former was found medically unfit. Chaudhary had approached the Tribunal for getting the relief. While the dispute between Chaudhary and Tiwari were on, the applicant was engaged as a casual Driver in which post he continued for long. He was only working as a casual Driver and receiving pay accordingly and no work at all was taken from him in the Group 'D' post. He was thus only working as a casual Driver. Therefore, after the Tribunal's decision and Jagannath Chaudhry's return, the applicant's services were dispensed with by the impugned order after giving him the leave salary for the period excluding the 23 days of leave he had taken. As the applicant could not be regularised in Driver's post which is a Group 'C' post and he did not have a claim against any Group 'D' vacancy, his services have been dispensed with and the same was correct. The applicant has no claim at all for regularisation or reinstatement pleads Ms. S. Srivastava. Ms. S. Srivastava also submitted that the applicant had also approached the Tribunal for being granted the post of Driver, but had failed.

6. We have carefully considered the matter and we are convinced that the applicant has a case. It is brought on record that the applicant was first originally engaged as a casual labourer in the Form Room in 1989 and only quite some time thereafter he was asked to perform the duties of a Driver on account of the incapacity of Chaudhary who was appointed as a Driver and the dispute between Chaudhary and Hari Shanker Tiwari who was appointed as a replacement. Throughout the period the applicant only worked as a casual labourer performing the duties of the Driver as per the requirement of the Department. He ~~has~~ also found to have been granted temporary status after having completed the requisite period of service, on 24.7.1991. Thus, two years after his being granted the temporary status, dis-engaging his services on the ground that he was working as a Driver and drawing pay accordingly and that he cannot be regularised in a Group 'D' post was totally improper. The applicant's having acquired temporary status he was entitled for being considered in his turn against the appropriate vacancies arising in Group 'D', the question of regularisation as a Driver in Group 'C' does not arise as he was only looking after the work from his capacity of a casual labour with a temporary status. The respondents have denied him what is his due in the lower cadre by holding that he could not be regularised in the higher cadre and therefore, he should lose his job. Thus, to our mind is a very preposterous suggestion to make and a ^{strange} decision to take. The impugned order therefore would have to be quashed and set aside with consequential relief. However, he would not be entitled for the back wages from the date of his dis-engagement and ultimate reinstatement. His request for regularisation as a Driver

does not merit any consideration at this stage. He would also be entitled for being granted cost towards his litigation.

7. In the above view of the matter, the application succeeds and is accordingly allowed. The impugned order is quashed and set aside and the respondents are directed to re-engage the services of the applicant within one month from the date of receipt of a copy of this order. He would be entitled for continuation in service and seniority and consequent regularisation in a Group 'D' post with notional fixation during the period he was unjustifiably dis-engaged. He would not however, be entitled for the back wages. We also award a cost of Rs.5,000/- to the applicant towards the cost of this litigation, *to be paid by the respondent*

AN MEMBER (J)

AM MEMBER (A)

psp.