

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 11th day of April, 2002.

Original Application No. 178 of 1999

With

Original Application No. 179 of 1999

With

Original Application No. 180 of 1999.

Q U O R U M :- Hon'ble Maj. Gen. K.K. Srivastava, A.M.  
Hon'ble Mr. A.K. Bhatnagar, J.M.

Keshav Kumar a/a 24 years S/o Late Dod Ram  
R/o 3-A, Shiv Nagar, Madhinath, Distt. Bareilly

.....Applicant In OA 178/1999

Dhirendra Kumar a/a 21 years S/o Sri Daya Ram  
R/o 917, Rajeev Colony, Subhash Nagar, Bareilly.

.....Applicant In OA 179/1999

Arvind Kumar a/a 22 years S/o Sri Deen Dayal  
R/o Jakhpura Tyer Mandi, Budda Chaiwala, Bareilly.

.....Applicant IN OA 180/1999

Counsel for the applicants :- Sri R.P. Singh  
Sri R.C. Pathak (In OA 179/99)

V E R S U S

1. Union of India through the Secretary,  
M/o Communication, Dak Bhawan, New Delhi.
2. Superintendent of R.M.S,  
'BL' Division, Bareilly.
3. Head Record Officer, R.M.S,  
'BL' Division, Bareilly.

.....Respondents

Counsel for the respondents :- Km. Sadhna Srivastava



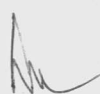
O R D E R (Oral)

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

The cause of action and relief prayed in all these O.As are similar. Pleadings are also the same. Hence these OAs are decided by common order.


2. In these OAs filed under section 19 of the Administrative Tribunals Act, 1985, the applicants have challenged the action of the respondent No.3 in dispensing with the services of the applicants who were engaged against clear vacancy and have prayed for direction to respondents to permit the applicants to join and work on the post of ED Mailman 'BL' Division, Bareilly till the regular selection and appointment is made on the post in question. They have also prayed that in compliance of the two orders passed by the Superintendent, RMS, Bareilly dated 24.11.1998 and 02.12.1998, the applicants should be permitted to continue on the said post.

2-A. The facts giving rise to these OAs in-short are that, as per the applicants, the applicants were appointed as substitutes on clear vacancy of ED Mailmen in the office of the Superintendent, RMS, 'BL' Division, Bareilly. The date of appointment of Sri Keshav Kumar and Sri Dharendra Kumar is 21.03.1998 and the date of appointment of Sri Arvind Kumar is 27.08.1998. Due to promotion of the incumbants of the post of ED Mailmen, six posts fell vacant and the respondent No.3 i.e. Head Record Officer, RMS, 'BL' Division, Bareilly appointed the applicants as substitute till regular appointments were made. Alongwith the applicants, three more persons namely D.S Yadav, Narendra Pal Bhaskar and J.R. Sharma were appointed as ED Mailmen on the same terms and conditions. The applicants worked up to 22.11.1998 on which date the respondent No.3 terminated the appointments of the applicants as well as D.S Yadav and two others namely N.P. Bhaskar and J.R. Sharma of his choice were retained. The applicants have, therefore, filed the OAs which have been contested by the respondents.



3. The learned counsel for the applicants submitted that there <sup>do were</sup> six vacancies of ED Mailmen and, therefore, terminating the services of the applicants without show cause is violative of principles of natural justice and such an action is certainly <sup>in</sup> ~~an~~ arbitrary ~~manner~~ <sup>he</sup> which needs to be quashed. The learned counsel for the applicants also submitted that Chief Post Master General, U.P. Circle, Lucknow, vide letter dated 23.08.1997 addressed to P.M.G, Kanpur and others has directed that all those who have the previous <sup>he</sup> experince <sup>he</sup> should be given priority for appointment. The learned counsel for the applicants invited our attention to CA-I which is the appointment letter of the applicants and has pointed out that the terms used is that the applicants are engaged purly on temporary basis till further orders. Since the vacancies are already there, the work is there, <sup>and therefore</sup> there was no question of taking this illegal action and the applicants are entitled to be taken back on duty. The learned counsel has further submitted that Sri N.P. Bhashkar and Sri J.R. Sharma who were also appointed alongwith the applicants, approached this Tribunal and their OAs have been allowed and they have been accommodated, therefore, the applicants also deserve the same treatment.

4. Km. Sadhna Srivastava, the learned counsel for the respondents while contesting the claims of the applicants submitted that the claims of the applicants cannot be considered at par with the case of N.P. Bhashakar and J.R Sharma because <sup>he</sup> ~~these~~ <sup>he</sup> are <sup>on</sup> different footing. N.P. Bhashkar and J.R Sharma were <sup>he</sup> provisionally appointed whereas the applicants were appointed as substitute on the guarantee of regular ED employee. On promotion of regular ED Mailman to group 'D' cadre, the term of




substitute ~~will~~ <sup>in</sup> automatically ~~comes~~ <sup>came in</sup> to an end, <sup>in</sup> that is why the respondent No.2 <sup>an</sup> took <sup>in</sup> action accordingly which is legal and as per rules. The learned counsel for the respondents also submitted that perusal of the order of this Tribunal dated 19.03.2002 in respect of Sri Bhashkar and 17.05.2001 in respect of Sri J.R. Sharma would reveal that the O.A has been allowed only on the ground that the appointment of the applicants was cancelled by the higher authority. The learned counsel for the respondents submitted that as regards relief No. 1 that the applicants should be allowed to join and work on the post of ED Mailmen till the regular selection and appointment is made, <sup>in</sup> ~~is concerned~~ <sup>in</sup>, there was no such condition specified in the engagement letters of the applicants and, therefore, relief No. 1 is liable to be rejected. As regards relief No. 2 that the two orders were passed by Superintendent, R.M.S, Bareilly on 24.11.1998 and 02.12.1998 permitting the applicants to continue on the post of ED Mailmen, it is submitted that there is no such order passed on 24.11.1998. In fact, it appears from annexure A- 4 that the applicants gave <sup>in</sup> applications on 24.11.1998. <sup>in</sup> <sup>which they have incorrectly quoted as order from Res no 2</sup> The learned counsel for the respondents has denied that respondent No.3 ever issued an order dated 02.12.1998. The learned counsel has placed reliance on the decision of this Tribunal dated 04.07.2001 passed in OA 96/1995 in which it has been decided that a substitute has no right to continue in case there is no guarantee by the regular incumbant. Since the posts fell vacant on the promotion of regular incumbants and <sup>in</sup> ~~any~~ <sup>no</sup> one was appointed regularly on that post, the term <sup>in</sup> of the applicants who were substitute automatically ended. <sup>in</sup> <sup>The Counsel for respondents has relied</sup> On full Bench judgment of this Tribunal, Bangalore Bench in <sup>in</sup> D.M. Nagesh Vs. Assistant Superintendent of Post Offices, 1997 pg.160 wherein it has been laid-down that no weightage



be given to the applicant for ED Agent posts for the experience gained by him while working as ED Agent on the provisional basis.

5. We have heard Sri R.P. Singh and Sri R.C. Pathak, the learned counsel for the applicants and Km. S. Srivastava, the learned counsel for the respondents and perused the records.


6. We have carefully considered the submissions made by the learned counsel for the parties and have also gone through the pleadings carefully. The main question to be decided in these OAs is whether the services of the applicants could be terminated or not specially when the vacancies are there and also whether the action of the respondent No.3 is in accordance with rules on the subject. It is an admitted fact that the applicants were working as substitute and the guarantee was given by the regular incumbants. Since the applicants were working <sup>in</sup> ~~vice~~ <sup>the</sup> regular incumbants on their responsibility, they could not continue on the post as a substitute after the promotion of the regular incumbent to group 'D' cadre. It was open for the respondents to have asked for a fresh guarantee in case the applicants were to be continued on the post. <sup>in</sup> ~~Since~~ <sup>that</sup> there is nothing on record to show <sup>in</sup> ~~there~~ <sup>for</sup> was any fresh guarantee filed by the applicants. <sup>the</sup> engagement of a substitute in the department, there are specific rules for such engagements and if those are not fulfilled the substitute has no right to continue on the same post. The action of the respondents, in our view, does not suffer from <sup>any</sup> ~~an~~ error of law and we do not find any ground to interfere. We would also like to <sup>make</sup> ~~make~~ it clear that there is a clear cut distinction between the provisional



appointment and the substitute engagement. As regards the case of N.P. Bhashkar and J.R Sharma, the appointment was made on provisional basis and, therefore, no parity can be claimed. This point is well covered by the judgment cited by the learned counsel for the respondents <sup>in DM Nagesh Case (Subpoena)</sup>.

7. We would also like to observe that direction given by the C.P.M.G, Lucknow vide letter dated 23.02.1987 filed as RA- 2<sup>b</sup> regarding <sup>in</sup> sympathetic consideration in respect of those who qualify and fulfil all the conditions for appointment. From the perusal of para- 2 of the said letter, it appears that the cases of only those have to be considered sympathetically whose names were sent by the Employment Exchange at the time of their appointment or engagement. In the present OAs, the question of name of the applicants being forwarded by the Employment Exchange does not arise as they were engaged as substitutes. In view of the aforesaid discussion, the O.As are dismissed being devoid of merit. However, we would like to direct the respondents to consider the names of the applicants as and when they take action for filling these posts on regular basis subject to <sup>with their</sup> fulfilling the required conditions, and they participate in the selection.

8. There shall be no order as to costs.

  
Member- J.

  
Member- A.

/Anand/