

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.323 OF 2000

ALLAHABAD THIS THE 14<sup>TH</sup> DAY OF NOVEMBER, 2007

HON'BLE DR. K.B.S. RAJAN, MEMBER-J  
HON'BLE MR. K. S. MENON, MEMBER-A

Raj Narain Yadav, aged about 19 years,  
S/Olate Shri Vijay Lal,  
R/O Village & Post-Siwan Kalan,  
(Via Sikandarpur), Thana- Sikandarpur,  
District-Ballia.

.....Applicant

By Advocate : Shri Rakesh Verma

Versus

1. Union of India,  
through the Secretary,  
Ministry of Communication,  
New Delhi.
2. The Superintendent of Post offices,  
Ballia Division, Ballia.
3. The Post Master General,  
U.P. Circle, Lucknow.

.....Respondents

By Advocate : Shri V.V. Mishra & Shri A. K. Singh

O R D E R

HON'BLE DR. K.B.S. RAJAN, MEMBER-J

Briefly stated by order dated 09.12.1999  
(Annexure A-3) the applicant was appointed on  
provisional basis as Extra Departmental Branch Post  
Master, Siwan Kalan (Sikandarpur), Ballia subject to  
the approval of the Chief Post Master General G.P.  
Circle lucknow. The said order also contained a rider  
that in case, his appointment by relaxation of rules is  
not approved by the Chief Post Master General, he  
shall have no claim for appointment to any post. The

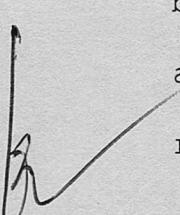
*[Signature]*

applicant took charge of the aforesaid post and continues to serve w.e.f. 10.12.1999. However, according to the applicant he was asked to hand over the charge without any written communication and against the said oral order of termination the applicant had filed this OA in March 2000. The applicant had stated that his father was working in regular capacity in the said Post Office as E.D.B.P.M. and he died on 28.07.1999. The applicant has moved an application in September 1999 for compassionate appointment. According to the applicant it was in the wake of that application that he was provisionally appointed. However, as the Circle Relaxation Committee declined to give its recommendation, the respondents are taking action to terminate his services.

2. Respondents have contested the OA. According to them since the Circle Relaxation Committee has held that their being no liability and the financial condition of the applicant not being so poor, it did not recommend his appointment.

3. Applicant has filed his rejoinder affidavit reiterating his contentions as contained in the OA.

4. By an order dated 28.03.2000 the applicant has been continuing in the said post. Counsel for the applicant submits that Circle Relaxation Committee recommendation is not essential in this case, since no



relaxation is called for, for his appointment, the applicant, according to the counsel, fulfills all the conditions for the appointment.

5. In the pre logne to the counter affidavit the respondent have stated as under:-

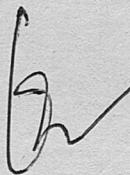
"Late Vijay Lal was posted on the post of Branch Post Master at Siwan Kalan, Sikandarpur and he died untimely on 28.07.1999. The mater of the son of late Vijay Lal (the petitioner) regarding appointment on the post of Branch Post Master at Siwan Kalan on the ground of compassionate ground was sent to regional office at Gorakhpur on 1.11.1999 and during this period vide notification to this office dated 9.12.1999 the petitioner was temporarily appointed on the post of Branch Post Master at Siwan Kalan subject to approval of Parimandliya Karyalaya, Lucknow and the abovementioned appointment of the petitioner on the basis of compassionate ground has been rejected by Chief Post Master General, Lucknow vide his letter no. Bharti/M-8107/00/2 dated 3.3.2000 on the basis of following reasons:-

- (1) No liability.
- (2) Family not considered in indigent condition.

A letter dated 21.3.2000 was sent by thi office to Deputy Mandaliya Dak Nirikshak Central, Ballia to inform the petitioner. The petitioner submitted medical certificate of his illness and went on leave from 15.3.2000 to 28.3.2000 and the petitioner gave the work of Branch Post Master to one Sri Rajendra Yadav on 15.3.2000 on his own responsibility and during this period the petitioner filed the abovementioned original application in the Central Administrative Tribunal against the order dated 3.3.2000 passed by respondent no.3 and this Tribunal was pleased to pass an order of maintaining status-quo on 28.3.2000 and the respondent no.2 is complying the order dated 28.3.2000 passed by respondent no.3."

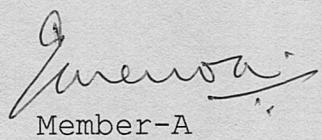
6. From perusal of the initial appointment order, it is clear that provisional appointment was resorted too on account of the non availability of adequate time to make regular appointment. At the material point of

time, i.e. Late 1990's such appointment on provisional basis did exist. It is only later on that even for provisional appointment application from open market are called for. It appears that the respondents have with a view to considering the application of the applicant for compassionate appointment, in anticipation of approval by the competent authority, appointed the applicant on provisional basis. Otherwise paragraph 2 of order dated 09.12.1999 would not have contained this aspect of Chief Post Master General approval FOR making the provisional appointment under normal circumstances the Superintendent of Post Offices is an authority to make such appointment. If the competent authority for compassionate appointment has, on the merits of the case, declined to approve the compassionate appointment, even then, the provisional appointment of the applicant in its capacity independent of such compassionate appointment does survive. From that point of view the appointment of the applicant till today is on provisional basis in which event he having completed three years of service has accrued certain right for being considered for regular appointment in according with the rules. The post of Extra Departmental Branch Post Master, Siwan Kalan (Sikandarpur), Ballia has not so far been regularly filled up. The respondents may take necessary action in this regard, in accordance with law. Since provisional appointees of over three years are entitled is preference, like those who are rendered surplus etc., for regular appointment the applicant is also



entitled for the same and other things being equal preference shall be given to the applicant to be appointed on regular basis. Till such time such a regular appointment is made, the applicant shall not be disengaged from the post of Extra Departmental Branch Post Master.

7. The OA is allowed to the above extent. There shall be no order as to costs.



Member-A



Member-J

/ns/