

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 1st day of November 2011

Original Application No. 1146 of 2003

Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mr. Shashi Prakash, Member (A)

Virendra Kumar Pandey, S/o Sri Rajendra Prasad Pandey, R/o Village and Post Office Siktaha, Vaya Mahuli, Distt: Sant Kabir Nagar.

By Adv : Sri A.K. Dave

Applicant

VERSUS

1. Union of India through its Secretary, Ministry of Communication, Deptt. Of Post, Dak Bhawan, New Delhi.
2. Post Master General, Gorakhpur Division, Gorakhpur.
3. Superintendent of Post Offices, Basti Division, Basti.
4. Sub Divisional Inspector of Post Offices, Basti.

By Adv: Sri S. Srivastava

Respondents

ORDER
By Hon'ble Mr. Sanjeev Kaushik, Member-J

By way of instant OA filed under Section 19 of the A.T. Act, 1985 the applicant seeks the following reliefs:-

- "i. *Pass order or direction to respondent not terminate the services of the applicant and continue his service until regularly selected candidate become available.*
- ii. *Direct the respondents to regularise the applicant on the post of GDS/EDDA/EDEC Mahsi, District Basti as he has rendered more than 8½ years service on the said post.*
- iii. *Pass such other and further order to which this Hon'ble Court/Tribunal may deem fit and proper in the facts and circumstances of the case.*
- iv. *Award the cost of the original application in favour of the applicant."*

2. The brief facts of the case are that the applicant was initially appointed as EDDA on adhoc basis on 27.01.1995. Thereafter, by giving artificial breaks the applicant was again appointed on the aforesaid post

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on 01.01.2003 and he assumed the charged on the same very day. The respondent department issued policy on 05.09.2003 copy of which has been annexed as Annexure A-4. In accordance of that when the respondents are going to dispense with the services of the applicant, the applicant approached this Tribunal by way of present OA. This Tribunal as an interim measure by order dated 22.09.2003 directed the respondents to allow the applicant to continue in service until regularly selected candidates became available. Thereafter, the applicant was allowed to continue in service. The applicant seeks direction to allow him to continue as such till regularly selection candidate joins.

3. Pursuant to the notice the respondents appeared and filed counter affidavit. In the counter affidavit filed on 12.04.2009 they have submitted that the applicant has been allowed to continue on adhoc basis as per interim order of this Tribunal. It is further submitted that the appointment of the applicant is not in accordance with rules.

4. We have heard Shri A.K. Dave learned counsel for the applicant and Sri S. Srivastava, learned counsel for the respondents. Learned counsel for the applicant argued that the action of the respondents in discontinuing the service of the applicant is in violation of principle of natural justice as by replacing the applicant the respondents are going to appoint another adhoc employee. He refers to letter which is appended with Suppl. Rejoinder Affidavit filed on 13.03.2011, whereby similarly situated persons who approached this Tribunal has been given appointment on regular basis. He argued that similar treatment be given to applicant also.

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6. On the other hand Sri S. Srivastava, learned counsel for the respondents argued that initial appointment of the applicant was defective and the same has not been done in accordance with law. He further referred to order dated 07.04.2011 passed in OA No. 1177/06 and argued that similar controversy has been put to rest as that OA has been dismissed. He further argued that the order dated 07.04.2011 has been challenged before the Hon'ble High Court by way of Writ Petition and in that Writ Petition no stay was granted. He also referred to judgment passed by the Full Bench of Hon'ble Supreme Court in case of Secretary,

State of Karnataka and others Vs. Uma Devi (3) and others : (2006) 4 SCC 1

SCC 1. Lastly, he submitted that the OA be dismissed as the applicant has no right to continue in service.

7. We have considered the rival submissions and gone through the judgments. It is an admitted fact that the applicant has been appointed ~~by~~ dehors the service rules and well established norms of recruitment. He was appointed on adhoc basis without evaluating other suitable candidates from the public. The applicant is continuing on the post on the basis of interim order passed by this Tribunal. It is settled law that a person who secured appointment in de-horsing the service rules, cannot seek equity from any Court of law. Even the Full Bench in case of Uma Devi (3) (supra) has considered this aspect of the matter and have given direction to the effect that the case of the applicant (therein) will be allowed to compete the recruitment process and they have been given certain relaxation. Relevant rule of Hon'ble Full Bench reads as under:-

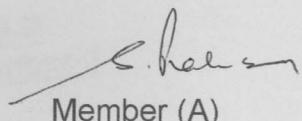
“.....But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them.”

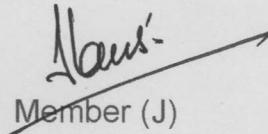
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Ab.

8. In view of the above we find no reason to issue any direction to the respondents as prayed by the applicant in this OA. If the respondents are going to appoint any person on regular basis then the applicant will also be considered in accordance with rules and if the applicant became overage then relaxation be given in accordance with the ratio given in the case of Uma Devi (3) (supra). The respondents are at liberty to consider the case of the applicant for extension in service on adhoc basis if they needed.

9. In view of the above the OA is disposed of. No cost.

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Member (A)


Member (J)