

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 26th day of March, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 1239 of 2003

Himanshu Shekhar Chaubey S/O Sri Kapil Deo Chaubey R/O H.No. S-24/1-4-A, Taktakpur Road, Mahaveer Colony, Ardali Bazar, Varanasi.....
.....Applicant.

Counsel for applicant : Sri S.K. Pandey.

Versus

1. Union of India through Secretary, Ministry of Communication, New Delhi.
2. Director General of Posts, Dak Bhawan, New Delhi.
3. Chief Post Master General, Lucknow.
4. Post Master General, Allahabad Division, Allahabad.
5. Superintendent of Post Offices, Eastern Division, Varanasi
6. Assistant Superintendent of Post Offices, Town Sub-Division (East), Varanasi.
7. Sri Diwakar Pathak, S/O Chandra Bhushan Pathak R/O SA-17/130-F-1, Ashok Vihar Colony, Phase-II, Paharia, Varanasi.
8. Ram Das Akela, Ex-Superintendent of Post Offices R/O Gauhatpur Cantt., Varanasi through Superintendent of Post Offices, Varanasi East.
9. Sri R.D. Ram, Ex-Assistant Superintendent of Post Offices, R/O Village & Post Sidhri, District Azamgarh through Superintendent of Post Offices, Varanasi (East), U.P.

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.....Respondents.

Counsel for respondents : Sri R.C. Joshi & Sri N.C. Nishad.

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O.A. No. 566 of 2003

Dewakar Pathak S/O Chandra Bhushan Pathak R/O 17/130-F-1, Ashok Bahar Colony, Phase-II, Paharia, Varanasi.

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.....Applicant.

Counsel for applicant : Sri S.K. Mishra.

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Versus

1. Union of India through Secretary, Ministry of Communication, Department of Post, New Delhi.
2. Post Master General, Lucknow.
3. Director of Post Offices, Allahabad.
4. Senior Superintendent of Post Offices, Varanasi Division, Varanasi.
5. Assistant Superintendent of Post Offices, Town Sub-Division Varanasi.....

.....Respondents.

Counsel for respondents : Sri N.C. Nishad.

O R D E R (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri S.K. Pandey and Sri S.K. Mishra, learned counsel for applicants and Sri N.C. Nishad, learned counsel for respondents and perused the pleadings.

2. Since both the O.As. have common cause of action, it would be proper to dispose them of by a common order.
3. O.A. No.566/03 has been instituted by Sri Diwakar Pathak challenging the order dated 29.1.2003 whereby the alternative appointment given to the applicant on the post of Extra Departmental Delivery Agent vide order dated 14.9.2001 (Annexure 13 in O.A. No.1239/03 has been cancelled and the said order was communicated to the applicant vide order dated 4.2.2003 (Annexure 1 to O.A. No.566/03). According to the applicant Diwakar Pathak, he had worked for more than three years as Extra Departmental employee at different Post Offices from 18.8.98 till the date he was given alternative appointment vide order dated 14.9.2001. The alternative appointment to Diwakar Pathak was given by the Assistant Superintendent of Post Offices, Cantt Sub-Division, Varanasi against the post of E.D.D.A., Umraha vide his memo No.A/286/2001 dated 14.9.2001 in compliance with the office letter No.A/286/2001 dated 12.9.2001 issued by the senior Superintendent of Post Office, East Division. It appears

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that the Post Master General, Allahabad on a review issued an order on 5.12.2001 stating therein that Shri Pathak was not entitled for an alternative job as he has not completed three years regular service as required under DG Post letter No.19-34/99-ED & Trg. dated 30.12.99 circulated vide office letter No.STA/19/4/3/Ch.III dated 1/2000. In para 2 of the letter dated 30.12.99 reference has been made to in office order dated 18.5.99 which provides that 'Efforts should be made to give alternative employment to ED Agents who were appointed provisionally and subsequently discharged from service due to administrative reasons, 'if at the time of discharge they had put in not less than three years's continuous approved service! In such cases their names should be included in the waiting list of ED Agents discharged from service prescribed in DG P&T letter No.43-4/77-PEN dated 23.2.1979.'

4. A perusal of the order impugned in O.A. No.566/03 would indicate that while computing three years services necessary for giving alternative job, the SSPO, East Mandal, Varanasi has not taken into reckoning the services rendered by Diwakar Pathak after 5.5.99. According to Diwakar Pathak he had worked even after 5.5.99 and had completed three years of continuous services as mentioned in the order dated 14.9.2001 by which the applicant was given alternative appointment. It cannot be gainsaid in our opinion to be eligible for an alternative appointment one have had to put in not less than three years approved service. The reply given to the show cause notice dated 18.12.2001 was not properly addressed to. Now in our opinion, the matter is required to be re-considered at the level of SSPO and a fresh order needs to be passed after proper self direction on categorical finding with reference to the services rendered by the applicant up to the date he was given alternative appointment.

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5. So far as O.A. No.1239/03 is concerned, it seeks quashing of orders dated 15.11.2000 and 14.9.2001 annexed as Annexure A-3 and A-13. The order dated 14.9.2001 was set aside by SSPO, East Division, Varanasi vide order which was a subject matter impugnment in O.A. No.566/03 and by the other impugned order dated 15.11.2000 Diwakar Pathak was appointed as EDDA, Umarha as a substitute by replacing the applicant who was working there as a substitute. It cannot be gain said that in case Diwakar Pathak is found to have completed three years approved service on the date of alternative appointment, he would be entitled to replace H.S. Chaubey who was working as substitute but in case Diwakar Pathak was not found entitled for alternative appointment in terms of the discussion afore stated then rule that a substitute will not be replaced by another substitute will govern. The SSPO while taking decision in the light of the observation made in O.A. No.566/03 shall take appropriate decision in the matter which such decision will govern to both the parties.

6. The contention of Sri S.K. Pandey is that the services rendered by Sri Diwakar Pathak as substitute from 15.10.2000 to 14.9.2001 should not be taken into reckoning for the purpose of computing three years of approved service in view of the fact that the applicant had already been working there as substitute. It is for the SSPO to decide this question, Till pending decision, the parties shall maintain status-quo as on date.

7. In view of the above discussion, the impugned order dated 29.1.2003 communicated to the applicant vide letter dated 8.2.2003 is liable to be set aside with a direction to the SSPO, East Division, Varanasi to pass a fresh order after proper self direction, ^{✓ b and 2} keeping in mind the reply given by Diwakar Pathak to show cause notice and after recording a

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categor-ical finding period of approved services rendered by the applicant before he was given alternative appointment. The O.A. No.566/03 is, therefore, allowed. The order therein is set aside. The respondent SSPO is directed to pass a fresh order in accordance with law in the light of observations made by this Tribunal. Decision may be taken in this regard within a period of two months from the date of receipt of a copy of this order.

No order as to costs.

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A.M.

Regd
V.C.

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