

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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original Application No. 1302 of 2003.

this the 30th day of October 2003.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER(A)
HON'BLE MR. A.K. BHATNAGAR, MEMBER(J)

Umesh Dhar Dwivedi, S/o late Saru Dhar Dwivedi, Village & Post
Malhanpar, via Bans Gaon, District Gorakhpur.

Applicant.

By Advocate : Sri K.C. Sinha.

Versus.

1. Union of India through Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Director General Posts, Dak Bhawan, Sansad Marg, New Delhi.
3. CPMG, U.P. Circle, Lucknow.
4. P.M.G., Gorakhpur Region, Gorakhpur.
5. Director postal Services, Gorakhpur.
6. Sr. Supdt. of post Offices, Gorakhpur Division, Gorakhpur.

Respondents.

By Advocate : Sri R.C. Joshi.

O R D E R

BY MAJ GEN K.K. SRIVASTAVA, MEMBER(A)

In this O.A. filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for setting aside the order dated 3.6.2003 (Annexure A-10) by which the representation of the applicant has been rejected by P.M.G., Gorakhpur. The applicant has also challenged the order of Asstt. Supdt. of post offices, Sub-Division, Gorakhpur dated 21.10.2003 by which Sri Gorakh Lal, Mail overseer-I has been ordered to take charge of GDS BPM, Jangal Dhusar,

District Gorakhpur.

2. The facts of the case, as per the applicant, are that he was engaged as Substitute on clear vacancy of GDSDM, Pandeypar on 12.11.2001. He submitted an application on 13.6.2002 for appointment on the post of GDSBPM, Jangal Dhusar against the clear vacancy. He was engaged on that post w.e.f. 18.6.2002. The applicant applied for regularisation on that post. The grievance of the applicant is that in spite of the fact that the case of regularisation of the applicant is pending before DG Posts and PMG, Gorakhpur, a notification has been issued on 22.11.2002 for appointment of GDSBPM, Jangal Dhusar. In this connection, applicant filed O.A. no. 1445 of 2002, which was decided by the order of this Tribunal dated 24.1.2003 by passing the following order :

"We have carefully considered the submissions made by the parties and in our opinion, the ends of justice will be served, if the matter is referred to the post Master General, Respondent no.3 to consider the case and pass suitable order so as to balance the interest of the individual and the department. The application is accordingly disposed of with the liberty to applicant to approach Respondent no.3 by making representation which shall be considered and decided expeditiously in any case within a month from the date a copy of this order is filed."

3. In pursuance of the order of this Tribunal dated 24.1.2003, the applicant submitted a representation dated 28.1.2003 to P.M.G., Gorakhpur, but the same has been rejected by P.M.G., Gorakhpur i.e. respondent no.4 by order dated 3.6.2003 (Annexure A-10). In pursuance of the order of the P.M.G dated 3.6.2003, the Asstt. Supdt. of post Offices, Sub-Division, Gorakhpur, issued relieving order dated 21.10.2003. Aggrieved by both the orders, the applicant has filed the present O.A.

4. The learned counsel for the applicant submitted that the action of the P.M.G., Gorakhpur is illegal and arbitrary. He submitted that the case was pending and was under correspondence with D.G. posts, who is the highest

authority of the department, P.M.G., Gorakhpur, could not reject the claim of the applicant. In support of his argument, he invited our attention to the letter of P.M.G., Gorakhpur dated 10.9.2002 addressed to Sri Anand Prakash, A.D.G. (GDS), Dak Bhawan, New Delhi. The learned counsel submitted that it is clear that this report has been sent by the P.M.G., Gorakhpur in reference to the letter from the D.G. posts dated 20.8.2002. It has also been mentioned in para 3 of the said letter that the applicant fulfils all the conditions for appointment on the post of GDSBPM. Therefore, it would have been correct on the part of the authorities concerned at Gorakhpur to have waited for the final decision of the D.G. posts. The learned counsel for the applicant further submitted that the applicant is not a Substitute as has been stated in the impugned order dated 3.6.2003. He was duly appointed by the Asstt. Supdt. of post offices and he cannot be treated as Substitute because the regular incumbent ^{was} expired in the year 2000. He also invited our attention to para 12 of the order of D.G. posts dated 21.10.2002 (Annexure A-6) which is the guidelines for regulating substitute/provisional arrangement made in place of regular Gramin Dak Sevaks.

5. Resisting the claim of the applicant, the respondents' counsel submitted that the applicant has never been appointed on regular basis. He is working as a Substitute and no right of claiming regularisation accrues to him. The action of the respondents is as per law and no irregularity has been committed by the respondents in this case.

6. We have heard counsel for the parties, carefully considered their submissions and closely perused the records.

7. The main point raised by the applicant's counsel is that the case of the applicant is still pending with D.G. posts and it would be appropriate if the process for

regular selection is undertaken only after the final decision of the D.G. posts is conveyed. We are not inclined to accept this submission of the applicant's counsel. From the perusal of the various records, it is clear that the D.G. posts called-for the report from the office of P.M.G., Gorakhpur ^{as Hon'ble M.P.} _{to} Bansgaon Sri Raj Narain Pasi addressed ^{to} the Ministry of Communication, in this regard.

The rule position is very clear that the appointing authority in respect of GDSBPM is the Divisional Head i.e. Sr. Supdt of post offices/Supdt. of post offices of the Division. In this case Supdt. of post offices is the appointing authority. There is a proper procedure for regular appointment laid down in the GDS Rules and for any regular appointment, the prescribed drill has to be followed. It has already been admitted by the applicant's counsel that he was appointed by Asstt. Supdt. of post offices. We would like to make it clear that the Asstt. Supdt. of post offices has no right to appoint the GDSBPM. Obviously, when the post fell vacant, the Asstt. Supdt. of post offices of the Sub-Division would have engaged the applicant or maximum it can be said that the applicant was appointed on ad hoc basis. However, we would like to make it clear that the applicant has failed to produce any appointment letter. Therefore, even if, we accept that the applicant was working on ad hoc basis, we would like to observe that he has to participate in the regular selection.

8. The learned counsel for the applicant has invited our attention to para 12 of the guidelines issued by the D.G. posts vide letter dated 21.10.2002 (Annexure A-6). For convenience of sake, we would like to re-produce the same as under :

" The extant provision provide for a provisional appointee to be placed on a waiting list for being considered for a regular appointment after he/she has completed three years of continuous employment. To avoid prolongation of such provisional appointments approval of the next higher authority should be taken in respect of all provisional appointments

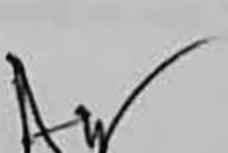
exceeding 180 and where the period exceeds one year express approval of the Head of the Region/Circle as the case may be would be necessary. Where the regular incumbent is not reinstated, immediate action must be taken to regularise the regularly selected provisional appointee against the said post without resorting to fresh recruitment.

9. We have carefully gone through the above para and the same does not vest any right for automatic regularisation. Even otherwise the provisional appointee has to be regularly selected. The applicant has not been able to establish that he underwent any process of selection for provisional appointment.

10. We would further like to observe that the legal position is well settled that the substitute/ ad hoc can be replaced only by a regularly selected candidate. Therefore, it would be correct to continue the applicant on the post till a regularly selected candidate is available.

11. We have also perused the impugned order dated 3.6.2003, which is a detailed and reasoned order. We find that the Supdt. of Post Office has already initiated the selection for regular appointment for the post of GDSBPM. In para 6 of the said order, the P.M.G., Gorakhpur, has mentioned that the application of the applicant should be considered also alongwith other candidates. In the interest of justice, we would like to provide that in case the applicant has not so far applied, he may apply for the post and his case should be considered for selection on regular basis alongwith other candidates. We also provide that the applicant shall be allowed to work on the post ^{in person} till the regularly selected joins.

12. With the above direction, the O.A. stands disposed of at admission stage itself with no order as to costs.


MEMBER (J)


MEMBER (A)

GIRISH/-