

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

O.A.No/T.A No 1543/02

Date of decision 29.10.64

Onkar Nath Chaudhary Applicant(s)
A Tripathi Counsel for the applicant(s)

Versus

U. O. I. S. S. S. Respondent(s)
H. C. Dubey Counsel for the respondent(s)

CORAM

Hon'ble Mr: A. K. Bhattacharya V.C./Member (J)

Hon'ble Mr: S. C. Chaudhary Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?


SIGNATURE.

Manish/-

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

...

Original Application No. 1543 of 2003

this the 29th day of October 2004.

HON'BLE MR. A.K. BHATNAGAR, MEMBER (J)
HON'BLE MR. S.C. CHAUBE, MEMBER (A)

Onkar Nath Chaubey, S/o Sri Gangotri Prasad Chaubey, R/o
Village Sarhwa, post Karahaiya Gosai, District Sidharth Nagar.
Applicant.

By Advocate : Sri A. Tripathi

Versus.

1. Union of India through the Secretary, Ministry of
Communication, Deptt. of posts. Dak Bhawan, Sansad Marg,
New Delhi.
 2. Chief postmaster General, U.P. Circle, Lucknow.
 3. postmaster General, Gorakhpur Region, Gorakhpur.
 4. Supdt. of post Offices, Basti Division, Basti.
 5. S.D.I. (Postal), Dumariyaganj, Sub Division, Dumariyaganj,
Sidharth Nagar.
- Respondents.

By Advocate : Sri H.C. Dubey

O R D E R

PER S.C. CHAUBE, MEMBER (A)

The applicant has impugned the order dated 5.9.2003 passed by the respondent no.4 directing the Sub Divisional Inspector (in short S.D.I.) for termination of the engagement of the applicant, besides the order dated 8.9.2003 of the respondent no.5 terminating the engagement of the applicant from the post of GDSMP/Delivery Agent. He has also sought a direction to the respondents not to replace the applicant by another adhoc/substitute arrangement till the regular appointment is made.

2. The facts, as per the applicant, are that he was working on the post of Extra Departmental Mail peon (in short EDMP)

and posted at Tenua Grant District Siddarth Nagar since 1.8.2003. According to the applicant, he has been engaged on adhoc basis on following places during the period mentioned against each :

post held by the applicant	period from to	place of posting
EDDA	19.1.2000 -17.4.2000	Itwa P.O.
EDDA	6.5.2000 -26.6.2000	Itwa P.O.
EDDA	27.7.2000-6.10.2000	-
EDMP	16.1.2001-15.4.2001	Tenua Grant
EDDA	31.7.2001-31.8.2001	Itwa P.O.
EDDA	1.9.2001-1.12.2001	Bijwar Badhai
EDR	28.12.2001-1.3.2002	Itwa P.O.
ED Packer	3.9.2002-30.11.2002	Itwa P.O.
EDR	3.3.2003-30.4.2003	Itwa P.O.
EDR	1.7.2003- 31.7.2003	Patila
EDMP	2.8.2003-30.9.2003	Tenua

3. According to the applicant, he fulfilled all the conditions of eligibility for appointment on the said post of EDDA/MC as provided under the EDA (Conduct & Service) Rules, now re-designated as GDS (Conduct & Employment) Rules, 2001. He had worked as substitute in different post offices w.e.f. 19.1.2000 upto 30.9.2003 with artificial breaks made by the respondents and has completed more than three years service under the respondent no.5 without any complaint against his work and conduct. He has also cited the instructions of Director General of posts issued in the year 2001 that the substitute who has worked for a long time, may be considered for regularisation on any vacant post by giving him regular appointment.

4. The applicant was last engaged on 2.8.2003 as GDSMP/ Delivery Agent in Tenua Grant Branch post office and submitted a representation before the respondents on 4.9.2003 for regularising his services and giving him regular appointment on any vacant ED post in the Sub-division. But, the respondent

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did not consider the legitimate claim of the applicant for regularising his services even though he fulfilled all the conditions of eligibility for appointment on the said post. On the other hand, in an arbitrary and illegal manner, terminated the engagement of the applicant and relieved the applicant from the said post and engaged another person as adhoc/substitute.

5. The applicant has further stated that the respondent no.4 has issued instructions vide order dated 5.9.2003 directing the SDI of the Division to terminate the services of all substitutes working in the sub-division. According to the applicant, the respondent no.4 i.e. Supdt. of post offices, Basti Division, Basti has no power to review the appointment made by the competent authority as held by the Tribunal in Full Bench decision. Thus, the order passed by the respondent no.5 terminating the engagement of the applicant and engaging another person as adhoc/substitute is wholly illegal and arbitrary. Further, the respondents have not decided the representation of the applicant submitted by him earlier.

6. The applicant has further stated that the Hon'ble Supreme Court as well as the Tribunal in several decisions have held that one adhoc /substitute arrangement cannot be terminated and replaced by making another adhoc/substitute arrangement. He has also referred to O.A. no. 1274/2003, which he filed earlier. The ^{same} [was disposed of vide judgment and order dated 28.10.2003 directing SSPO, Basti Division, Basti ~~was directed~~ to dispose of the representation of the applicant submitted before him by a reasoned and speaking order within a period of two months from the date of receipt of copy of the order under intimation to the applicant. In view of the ban imposed by the Govt. of India, Ministry of Finance, no regular appointment is likely to be made, hence this O.A.

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7. Respondents on the other hand have contended that post of GDS MD/MC Tenuwagrant under jurisdiction of Itwa S.O. District sidharthnagar, fell vacant since 29.07.2001 as incumbent Shri Mohd.Yar absconded . To manage the work of the said post in stop gap arrangement, the sub Divisional Inspector Domariaganj Sub-Division engaged Shri Masiuddin GDS MD/MC ~~against~~ the said vacant post of GDS BPM Tenuwagrant and also in order to manage the work of the post of GDS MD/MC Tenuwagrant, the S.D.I.(P) engaged the petitioner as substitute on the risk and responsibility of Shri Amar Nath Tripathi, Postal Assistant Domariaganj vide his memo dated 01.08.1993. The ^{memo}~~memo~~ very categorically clarified that the arrangement is purely temporary and can be terminated at any time without prior information or notice.

8. Respondents have further contended that due to sufficient decrease in the delivery work of EDBOs, the Director General Posts vide letter dated 14.08.2003 (Annexure CA-I) instructed the field offices not to fill the vacant post of GDS in post offices with two or more hands of GDS. Accordingly, S.D.I. (P) Domariaganj was ordered that since the Branch post office has two posts, one of GDS BPM and the other of GDS MD/MC, hence the work of the said vacant post should be managed by the GDS MD/MC Shri Masiuddin vide letter dated 05.09.2003. Accordingly, it was arranged that the regularly appointed GDS MD/MC Tenuwa Grant Shri Masiuddin will perform the work of GDS BPM in addition to his own duties by dis-engaging the applicant with immediate effect. Thus, post of GDS BPM Tenuwar grant is not vacant and the regularly selected and appointed GDS MD/MC is performing the duties of the said post in addition to his own duties.

9. Respondents have further submitted that the applicant was never selected or appointed on the post of GDS MD/MC

Tenuwagant or elsewhere in the jurisdiction of Domariaganj as such he is not entitled to regularisation. They have further cited the law laid down by Hon'ble Supreme Court that a substitute has no right to claim his regularisation. Further it is for the department to consider as to whether there was a proper case for absorption or not of the applicant and pass suitable orders. In the instant case, the work of the vacant post is being performed by regular GDS MD/MC in addition to his own duties and thus, there is no violation of any rule and departmental instructions nor there is any illegality or arbitrariness in the actions of the respondents, as contended by the petitioner,

10. We have heard the counsel for the parties and perused the pleadings.

11. Counsel for the applicant has cited the judgment of Central Administrative Tribunal, Cuttack Bench in the case of Shri Debendra Chandra Muduli Vs. U.O.I. & Ors. in which an extra departmental agent who was appointed as Substitute continued for a period of 5 years without any blemish. His services were terminated on the ground that he did not have the requisite educational qualification. Further services were terminated without giving any show cause notice. It was held by the Tribunal that standard of educational qualification is a sine qua non for discharging the responsibility of ~~the~~ post of Branch Post Master then how the applicant was able to discharge his duties for all these years. Accordingly, the impugned order was quashed and the respondents were directed to regularise the services of the applicant after ~~relaxing~~ the condition of minimum educational qualifications as set out in the Rules.

12. On the other hand the respondents have cited the decision of Hon'ble Supreme Court in the case of UNION OF

INDIA & ORS VERSUS DEBIKA GUHA & ORS reported in 2000(2) SCSLJ 132 in which the Hon'ble Supreme Court decided that there cannot be a legal claim on the basis that extra departmental agents of Postal Department have worked for 180 days continuously. It is for the department to consider the same whether that was a proper case for absorption or not and pass appropriate orders. The relevant extract of the judgments is reproduced below:--

"The grievance before us in this appeal is in relation to an order passed by the CAT Calcutta Bench holding that substitute Extra Departmental Agents of the Postal Department who have worked for 180 days or more in one calendar year continuously can claim to be regularised. The Tribunal gave a further direction that the Appellants should determine on the basis of available records the period for which the respondents have worked continuously and if such period in any calendar year exceeds 180 days, neglecting short artificial breaks, should absorb them in future vacancies, provided they satisfy the eligibility conditions. When similar matters came up before this Court in Writ Petition No.1624/1986 and connected matters, this Court held that the claim on behalf of substitutes ordinarily is not entertainable but made it clear that, however, if they have worked for long period continuously, their cases could be appropriately considered by the department for absorption. When this court has already decided that there cannot be a legal claim on the basis of that they have worked for 180 days continuously, it may not be necessary for us to consider that aspect of the matter. Indeed if it is shown that they have worked for long periods continuously, it will be for the department to consider the same whether that was a proper case for absorption or not and pass appropriate orders. Thus, we think the whole approach of the Tribunal is incorrect in the light of the decision of this Court. Therefore, we set aside the order passed by the Tribunal. However, it is open to the Appellants to examine the case of the respondents, if they have worked for long period, to absorb them as the case may be. The appeal is allowed."

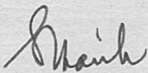
13. The contention of the applicant that his services were terminated and in his place an ad-hoc substitute was engaged to perform the functions of GDS BPM Delivery agent in Tenuwagrath Branch Post Office has been vehemently challenged by the respondents who have stated that his substitute Shri Massuddin was a regularly appointed GDS MD/MC. Thus, after engagement of the applicant, the post of GDS BPM has been


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filled up by a regularly selected and appointed GDS MD/MC. We are, therefore, unable to persuade ourselves to accept the contention of applicant. Moreover, as per the law laid down by the Hon'ble Apex Court in the case of Debika Guha & Ors (Supra), there is no right for regularisation vested in the substitutes. On the other hand, the Apex Court has also maintained that substitutes have no legal claim on the basis of having worked continuously and if there are cases where the substitutes have worked for 'longer period' it is for the department to consider the same as to whether there was a proper case for absorption or not and pass appropriate orders.

14. Since the applicant has been replaced by a regularly appointed person, his case, therefore, falls through.

15. For the reasons and case law enunciated by the Hon'ble Apex Court, the O.A. is bereft of merits. Accordingly the same is dismissed. No order as to costs.


Member (A)


Member (J)

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