

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH: ALLAHABAD

Original Application No. 1621 of 2003.

Allahabad this the 24<sup>th</sup> day of January 2005.

Hon'ble Mr.D.R Tiwari, Member-A.

Kamlesh Kumar Mishra  
son of late Ram Khelawan Mishra,  
Resident of Village Kabirpur (Mishran), Post  
Nibhapur, District Jaunpur.

.....Applicant.

(By Advocate : Sri A Dwivedi/  
Sri Satish Dwivedi)

Versus.

1. Union of India  
through the Secretary,  
Ministry of Communication,  
Government of India,  
New Delhi.
2. The Post Master General,  
Gorakhpur Region, Gorakhpur.
3. The Director Postal Services,  
Gorakhpur Region, Gorakhpur.
4. The Sr. Superintendent of Railway Mail Services,  
'G' Division, Gorakhpur.
5. The Sub Record Officer,  
Railway Mail Services,  
'G' Division, Ballia.

.....Respondents.

(By Advocate : Sri Rajeev Sharma/  
Sri S Singh/  
Km.Mamta Sharma)

O R D E R

By this O.A., filed under section 19 of the A.T.  
Act, 1985, the applicant has prayed for the following  
reliefs :

- "a. That the respondents be directed to provide all the benefits of regular appointment/regularisation to applicant with effect from the date of order dated 09.12.1989 and he be allowed all the consequential benefits attached to the post with effect from the said date or in the alternative the aforesaid benefits be allowed to applicant with effect from the date, the same has been allowed to similarly situated

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candidate i.e. Sri Ratheen Kumar E.D. Mail Man posted under the respondent No.5.

- b. That the respondents be directed to give regular appointment or to regularise his services on E.D. post and provide him all the benefits attached to the post including salary with effect from the date of regular appointment of similarly situated candidate i.e. Sri Ratheen Kumar, E.D. Mail Man posted under the respondent No.5.
- c. That by means of suitable order or direction the respondents be restrained from interfering in functioning of applicant and he be paid regular salary of the post of E.D. Mail Man."

2. Filtering out the details, the material factual matrix to adjudicate the controversy is that the applicant, son of freedom fighter, registered with the District Employment Exchange, was interviewed on 06.07.1983 (Annexure A-3). He was employed as Casual Labour in the office of Railway Mail Services, Shahganj with effect from 06.07.1983 and since then he is continuing in employment under the respondents.

3. In pursuance of instruction contained in D.G. Post letter (Annexure A-4) for giving preference to casual worker of the Department in recruitment to E.D. Posts, the applicant applied for appointment to the post against existing vacant post in 'G' Division, Ballia (Annexure A-5). He was illegally ignored and other person was selected. The Director, Postal Services by his order dated 23.11.1989 set aside the selection and ordered for appointment of the applicant alongwith Ratheen Kumar and the applicant with Ratheen Kumar were appointed as E.D. Mail Man by order dated 09.12.1989 (Annexure A-7). However, the respondent No.5 without disclosing any reason and passing any order stopped taking any work from 18.12.1989 from the applicant and Ratheen Kumar.

4. Being aggrieved, he made representation to the Competent Authorities on 19.12.1989 and followed it by

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several reminders for allowing him duty and salary but no action was taken. Between 1989 and 1995, the applicant made several representations which are at Annexures A-8 to A-13. Meanwhile, Senior Suptd. 'G' Division Gorakhpur by his letter dated 18.03.1997 instructed S.R.O. R.M.S. Ballia for appointment of Ratheen Kumar against the existing vacant E.D. Post (Annexure A-14) and Ratheen Kumar was appointed. The applicant who was similarly situated was ignored. When the matter was taken up by the Director/Secretary and the Post Master General, Gorakhpur Region, the applicant was adjusted as part time Attendant by the order dated 29.11.1999 and the same Senior Suptd. of Railway Mail Services, 'G' Division cancelled the above order by order dated 09.12.1999 and the applicant was informed that he would be adjusted against future vacancy (Annexure A-20 and A-21).

5. Again the applicant represented to various authorities including the Human Resources Development and Prime Minister. He was finally engaged on daily wage at Rest House, Shahganj with effect from 17.11.2001 (Annexure A-26) and was issued Identity Card with the designation as E.D. Mail Man (Annexure A-27). The applicant, since the date of engagement on 17.11.2001 on daily wages basis, has been representing for parity with Ratheen Kumar and Regularisation of his service. Between 3.6.2002 and 9.9.2003 he made several representations but nothing has been done. Postal receipts are at Annexure A-28 to Annexure A-39.

6. The action of the respondents have assailed on various grounds mentioned in para 5 and its sub paras. The main grounds of challenge are as under:-

- (i) The action is violative <sup>of</sup> articles 14, 16 and

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300/A of the Constitution and his regular appointment dated 09.12.1989 has not been cancelled as the respondents have arbitrarily stopped taking work from him

- (ii) There is clear case of discrimination against the applicant as Sri Ratheen Kumar, a similarly situated person has been allowed regular appointment vide order dated 18.03.1997 &
- (iii) Non-consideration of his representation for redressal of the grievance regarding regularisation in highly arbitrary, discriminatory, unjust and unreasonable."

7. The respondents, on the other hand, has contested the O.A. by filing a detailed counter affidavit. They have hotly contested the contentions/claims of the applicant. Vide para 5 of the C.A., the respondents have submitted that S.R.O. Ballia wrongly appointed one Sri Yadava and Tiwari which was set aside by D.P.S. Gorakhpur and Ratheen Kumar and the applicant were appointed as E.D. Mail Man vide S.R.O. Ballia's Memo dated 09.12.1989 and they started to work from 11.12.1989. Since Yadava and Tiwari filed O.A. No.1064 and 1065 of 1989 and the Tribunal granted interim <sup>order</sup> and consequently the applicant and Ratheen Kumar's services as E.D. Mail Man were terminated and they were ordered to work as Casual Labour but they did not turn up for duty since 17.12.1989.

8. Subsequently, Ratheen Kumar turned up and was appointed as E.D. Mail Man on 23.3.1998. The applicant's application dated 25.11.1998 and 17.02.1999 were forwarded to the Regional Office, Gorakhpur for consideration and guidance and in compliance of the letter of Post Master General dated 19.11.1999, the applicant was engaged as part time attendant on daily wages on humanitarian ground in Railway Mail Service, Rest House, Shahganj and started to work from 17.11.2001 and since then he is working as such. The respondents have further stated that the applicant absented himself and his name as casual

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labour was struck off from the list with effect from 24.09.1999. Para 22 of C.A. states that the applicant could not be appointed as there was no vacancy and Ratheen Kumar was appointed because he was senior to the applicant. Hence the O.A. is devoid of merit and be dismissed.

9. During the course of hearing, the learned counsel for the applicant, Sri Anil Dwivedi has submitted that the applicant was first appointed as casual labour with effect from 06.07.1983. Further he was regularly appointed as E.D. Mail Man with effect from 09.12.1989 and without giving any notice, the respondents stopped taking any work from the applicant which amounted to termination of his services by oral order. The appointment of Ratheen Kumar with effect from 23.03.1998 as he turned up to respondents and non-appointment of the applicant was discriminatory as he was also similarly situated. The grounds taken by the respondents that the applicant was junior and did not turn up to the office of the respondent is unjust, illegal and arbitrary. Non-availability of the post of E.D. Mail Man and striking of his name from the list of casual labour without giving him any opportunity is against the principles of natural justice. The counsel for the respondents has refuted the contention of the applicant's counsel. He has drawn my attention to paras 8, 14, 16, 20, 22 and 24 of the C.A. which speak of non-availability of vacancy, absence of the applicant, seniority of Ratheen Kumar and punishment to the official who wrongly made the appointment for the post of E.D. Mail Man. In short, he has reiterated the facts and legal pleas from the counter affidavit of the respondents and submits that the O.A. is devoid of merit and be dismissed.

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10. I have heard and carefully considered the rival submissions of the counsel for the parties and perused the pleadings.

11. From the above discussion, the following three issues have emerged which require elaborate discussion and adjudication:-

- (i) The appointment of the applicant as E.D. Mail Man and his disengagement without any show cause notice.
- (ii) The appointment of Ratheen Kumar who was disengaged with the applicant and
- (iii) The appointment of the applicant as part-time on daily wage basis.

I would like to discuss the first point mentioned above regarding appointment of applicant as E.D. Mail Man and his disengagement without any show cause notice. It is seen that before his appointment on regular basis as E.D. Mail Man, the applicant was working as casual labour w.e.f. 06.07.1983 in the office of respondents appointed him as E.D. Mail Man by order dated 09.12.1989 and by another order dated 18.12.1989, the respondents stopped taking any work from the applicant. No show cause notice was served to him and it amounted to verbal termination of his service as E.D. Mail Man. The respondents have claimed that he was asked to work as Casual Labour as he was working on that post before his appointment to this post. They have also submitted that the applicant left the job and did not work as Casual Labour since 19.12.1989. In this connection, it may be mentioned that verbal termination is illegal and once the employee has worked for about six years, he acquires temporary status. From records I do not find that whether temporary status was granted to him or not. Verbal termination of his service has been declared illegal by Ahmedabad Bench in the case of Sri Bhimjee Bhai Samnath Bhai Vs. U.O.I reported in A.T.J.

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1988 (2) at page 631. I respectfully agree with the conclusion of Coordinate Bench and feel that, in the facts and circumstances of this case, not taking work from the applicant which amounts to termination of his service is equally bad in law and it cannot be sustained.

The second crucial question which requires adjudication with regard to the parity of his appointment with that of Sri Ratheen Kumar. I have noticed that respondents have stopped taking work from the applicant and Sri Ratheen Kumar was appointed against existing vacant E.D. post w.e.f. 18.03.1997. Since both of them were similarly situated position and the applicant has alleged that this is a case of discrimination against the applicant. It has been contended that the respondents could have given him the similar treatment as it was given to Sri Ratheen Kumar. The respondents have submitted that Sri Ratheen Kumar was senior and he was first offered the post. At other place, it has been submitted by the respondents that there was no vacancy in the department and they could not offer him the post. They have also taken the plea that the applicant did not turn up hence he was not offered any post. These pleas of the applicant did not appeal to reason as they are contradictory in term at one time they say that there was no vacancy and in the same breathe they fasten blame on the applicant that he did not turn up. The record does not show that respondent has taken any action to contact the applicant. It was also their duty to contact him if their intention has been good. The applicant has been making representation after representation for allowing him in duty and appointment similar to Sri Ratheen Kumar and to this effect specific averment has been made in para 20 of the O.A.

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and the respondents instead of denying the same they have simply stated that the appointment of Sri Ratheen Kumar was legal as he was senior to the applicant. The respondents have submitted that his name was struck off from the list of Casual Labour w.e.f. 24.09.1990 and the appointment of Sri Ratheen Kumar was made on 18.03.1997. This indicates that both Ratheen Kumar and the applicant were available in the list of casual labour and to appoint one and deny the same benefit to the applicant, is nothing but sheer discrimination against the applicant. The plea taken by the respondents cannot be accepted and is negated in so far as the question of discrimination against the applicant is concerned.

The last point which I would like to discuss is with regard to the appointment of the applicant as part time worker on daily wage basis with effect from 17.11.2001. The record show that he has been issued one Identity Card and that Identity Card bears the designation 'E.D. Mail Man' (Annexure A-27). It is found that the applicant is working on daily wage basis for more than three years. It indicates that the work is of permanent nature and his continuation on daily wage basis is against all norms and is against the principles of natural justice. The Circular issued by the Government of India on the subject of the applicant and the continuation of the casual labour/daily wage workers stipulates that recruitment of daily wages may be made only for work which is of Casual or Seasonal or Intermittent nature or for work which is not of full time nature for which regular post cannot be created. It further provides that all eligible casual workers are adjusted against the regular posts to the extent such regular posts are justified. These instructions are available in the Circular issued by the Government of India, Department of Personnel and Training O.M. dated 07.06.1988, this shows that the respondents have taken

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no care to take action in accordance with the policy of the Government for regularisation of the applicant and they are continuing him on daily wage basis for a period of more than three years. It is also not the case of the respondents <sup>that</sup> they did not have the work which is not of regular nature. To continue one at daily wage for such a long time is against the principles of natural justice and amounts to exploitation of the labour. In view of these reasons, the O.A. is bound to succeed on merit.

10. In the result, the O.A. succeeds on merit and is allowed. The respondents are directed to count the services of the applicant with effect from 18.03.1997, the date when Ratheen Kumar, an ex-casual labour like him has been engaged by the respondents. The applicant, however, will not be entitled to back wages as he has not worked for that period. The applicant, however, will be entitled for back wages as Casual Labour w.e.f. 17.11.2001, the date on which he was engaged as Part Time Attendant and his services shall be regularised. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of the order.

No costs.

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Member-A.

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