

①
Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 09th day of July 2003.

Original Application no. 723 of 2003.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Brij Bhan Singh, s/o Sri J.K. Singh,
R/o Vill & Post Ahmadpur Pawan (Manauri),
Distt. Allahabad.

... Applicant

By Adv : Sri O.P. Gupta

Versus

1. Union of India, through Secretary,
Ministry of Communication, Govt. of India,
NEW DELHI.
2. Assistant Superintendent of Post Offices,
Central Sub Division,
ALLAHABAD.
3. Senior Superintendent of Post Offices,
Allahabad Division,
ALLAHABAD.

... Respondents.

Sri R.C. Joshi
By Adv : Sri G.R. Gupta

ORDER

Hon'ble Maj Gen K.K. Srivastava, Amember-A.

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has challenged the order dated 30.6.2003 (Ann A12) passed by respondent no. 2 and has prayed that the same be quashed and respondents be directed to allow the applicant to work on the post of Extra Departmental Mail Carrier (in short EDMC), Ahmadpur Pawana with all consequential benefits till regular appointment on the post in question is made.

2. The facts, in short, are that the applicant was

...2/-

(2)

2.

appointed as substitute EDMC, vide order dated 27.6.2000 (Ann A1). An order was passed on 18.6.2001 appointing the applicant on the said post on temporary basis. The respondents got the applicant medically examined through Chief Medical Officer (in short CMO) Allahabad, during July 2001 by addressing the CMO vide letter dated 16.7.2001 (Ann A3) that the medical examination be conducted as the applicant is a candidate for EDMC. ^{in appointment as in} Meanwhile, as required by the respondents, the applicant ^{gave in} ~~fill up~~ personal security bond for Rs. 4,000/-. The applicant also filled the ⁱⁿ ~~descriptive~~ particulars as per proforma given in annexure A6. Even the police verification was got conducted by the respondents. In spite of all these actions ⁱⁿ taken by the respondents, the applicant has been ordered to be dis-engaged with immediate effect by the impugned order dated 30.6.2003. Aggrieved by the same the applicant has filed this OA.

3. Sri O.P. Gupta, learned counsel for the applicant inviting our attention to various annexures submitted that all the formalities for regular appointment of the applicant were got completed by the respondents and, therefore, the act on the part of the respondents in dis-engaging him on which the applicant has been continuously working from 27.6.2000 is arbitrary and is also in violation of principle of natural justice as no opportunity has been awarded to the applicant before the impugned order is passed.

4. Learned counsel for the applicant argued that the action of the respondents is contrary to the condition given in para 2 of the letter dated 18.6.2001 (Ann A2) in which it has been clearly mentioned that the applicant's appointment is purely temporary and his services will automatically come to an end on appointment of regularly

....3/-

(3)

3.

selected candidate. Learned counsel for the applicant finally submitted that in view of the legal position that an ^{employee}ad hoc ^{employee} cannot be replaced by another ad hoc the impugned order is liable to be quashed.

5. Sri G.R. Gupta, Additional Standing Counsel, representing the respondents submitted that the respondents be given time to file Counter Affidavit. We have rejected this request of Sri G.R. Gupta as in our considered opinion this is a fit case to be decided at admission stage itself. Learned counsel for the respondents also submitted that the applicant's appointment was not regular and he was appointed purely on temporary basis. A temporary employee can always be terminated by an order simplicitor.

6. We have heard learned counsel for the parties, considered their submission and perused records.

7. Perusal of records leaves no doubt in our mind that the respondents have committed error of law. The legal position is well settled that an ad hoc ^{employee} cannot be replaced by another ad hoc ^{employee}. What we find surprising is that the respondents have gone ^{ahead} ~~head~~ in completing all the formalities which are required for regular selection. Besides, we also find that in the impugned order dated 30.6.2003 the status of the applicant has been stated to be that of a substitute, whereas vide order dated 18.6.2001 (Ann A2) the applicant has been appointed on temporary basis. The stand of the respondents is self contradictory. Therefore, the order which suffers from legal infirmity cannot sustain in the eyes of law and is liable to be quashed.

....4/-

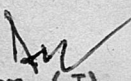


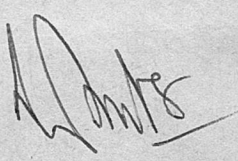
(4)

4.

8. For the aforesaid reasons, the OA is allowed. The impugned order dated 30.6.2003 (Ann A12) issued by the respondent no. 2 is quashed. The respondent no. 2 is directed to re-engage the applicant immediately and treat the intervening period as continuous, from the date of communication of this order. However, the applicant shall not be entitled for any back wages. The applicant shall be allowed to continue on the post of EDMC, Ahmadpur Pawan till a ^hregularly^hselected person is appointed. It is also directed that the candidature of the applicant shall be considered at the time ^hof regular selection is made, if applicant applies, keeping in view the merit and experience of the applicant. The OA is decided accordingly ^hat the admission stage^h.

9. There shall be no order as to costs.


Member (J)


Member (A)

/pc/