

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

THIS THE 7TH DAY OF April 2011

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MR S. N. SHUKLA, MEMBER (A)

Original Application No. 1177 OF 2006
(U/S 19, Administrative Tribunal Act, 1985)

Arvind Kumar Tripathi, aged about 24 years, S/o Shri Gauri
Shankar Tripathi, R/o Village and Post Rayath, Basti.

.....Applicant

V E R S U S

1. Union of India, through the Secretary Ministry of
Communication, Department of Post, New Delhi.
2. Post Master General, Gorakhpur Region, Gorakhpur.
3. Superintendent of Post Offices, Basti Division Basti.
4. Assistant Superintendent of Post Offices, Basti Division,
Basti.

.....Respondents

Present for the Applicant:

Sri A. K. Dave.

Present for the Respondents:

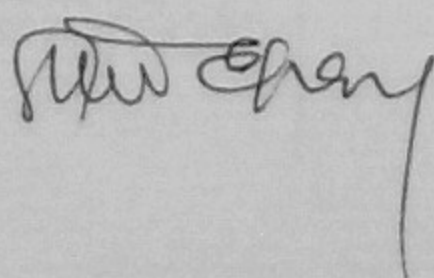
Sri Saurabh Srivastava.

O R D E R

Delivered By HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)

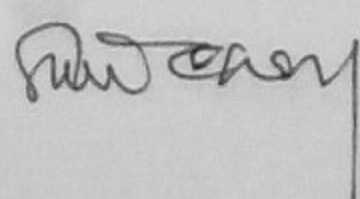
Instant O.A. has been instituted for the following
reliefs:-

- "i). To issue an order rule or direction for
quashing and setting aside the impugned
order dated 10.10.2006 (Annexure No. A-I)
to the Original Application.*
- ii). To issue an order or direction to the
respondent to consider the representation
dated 3.8.2004 as per the judgment/order
dated 25.05.2004 passed by the Hon'ble
Tribunal in O.A. No. 1063/2003."*



The facts of the case may be summarized as follows:-

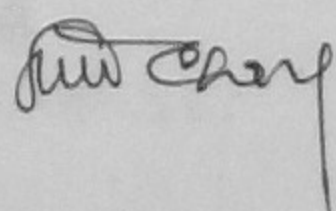
2. It has been alleged by the applicant that the post of G.D.S.B.P.M. Raura Kala fall vacant on account of termination of Sri Ravish Kumar in November, 2002. Sri V. K. Tripathi G.D.S. Packer Rayath was ordered to work on the post of G.D.S.B.P.M., Raura Kala, in stop gap arrangement. And Sri V. K. Tripathi in pursuance of the order of A.S.P.O's Basti joined the post on 22nd November, 2002 at Raura Kala. Mr. V. K. Tripathi was not willing to work as G.D.S.B.P.M. Raurakala due to certain personal reasons hence Sri V. K. Tripathi engaged the applicant as substitute vice him on his own risk and responsibility to work as G.D.S.B.P.M., Raaura Kala and handed over the charge to the applicant on 23rd November, 2002. That applicant also submitted an application along-with educational qualification for regular appointment to the Superintendent of Post Offices, Basti Division, Basti /respondent No.3 for approval of his engagement as substitute. That the applicant was possessing the requisite qualification for the post, after taking over the charge applicant had been working with full zeal and devotion and with due sincerity and there had been no complaint against him regarding his conduct etc. The engagement of the applicant was also approved vide order



dated 28th August, 2003 by the competent authority and salaries was paid to him in view of the order dated 28th August, 2003. That the applicant had been holding the post of G.D.S.B.P.M. Raura Kala w.e.f. 23rd November, 2002. That the applicant was engaged as a substitute against the clear vacant post though there is no provision in the G.D.A. (Conduct & Employment) rule for engagement of a substitute against the clear vacancy hence the employment of the applicant on the post of G.D.S.B.P.M., Raura Kala can be treated as an *ad-hoc* or temporary appointment which is to be continued till the vacancy is filled up by the regular appointment, the applicant apprehends that the respondents are going to terminate the services of the applicant hence he has filed O.A. No. 1063 of 2003 in C.A.T., Allahabad Bench and relief was prayed in order to permit the applicant to continue to work till regular appointment is made or to regularize his services on the ground that there exists clear vacancy and the applicant was possessing requisite qualification. That similarly situated employee also filed the O.A. before the C.A.T. Allahabad Bench and the O.A. of the similarly situated person No.1075 of 2003 and O.A. No. 1109 of 2003 was disposed with direction to the respondents to dispose of the representation and also directed to consider the claim of the applicant for

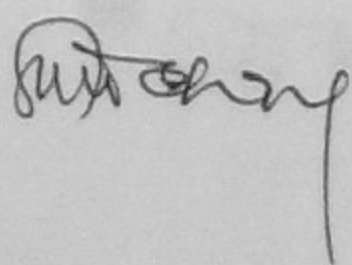
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regularization in the department in accordance of the scheme. The O.A. No. 1063 of 2003 of the applicant was also disposed of by passing the similar order on 25th May, 2004. In pursuance of the direction of the Tribunal a representation was submitted on 03rd August, 2004 to the respondents along-with documentary evidence prayer was also made in order to regularize the services of the applicant. The respondent No.03 at the time of his transfer hastily decided the representation of the applicant and rejected the same. That the affected persons aggrieved from the arbitrary action of the respondents and agitated the matter before the S.S.P.Os the successor and the S.S.P.Os. Gorakhpur after careful consideration of the matter stayed the implementation of the orders passed by respondent No.3 during the period from 01st September, 2005 to 15th September, 2005. The applicant filed an O.A. No. 1194 of 2005 as he was apprehending that his services may be dispensed with and the O.A. was disposed of at the admission stage and granted the interim order protecting the interest of the applicant till the decision on the representation and the representation was also not disposed of and the applicant continued to work on that post. But the representation of the applicant was rejected in arbitrary manner and vide order dated 10th October, 2006 the engagement of the

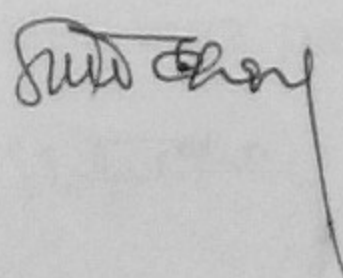


applicant was stopped and also ordered that effect be given to order passed by respondent No.3 that the applicant had been working since 2002 to the best of his capability hence he deserves to be regularized. As respondents have not accepted the representation of the applicant hence the O.A..

3. Respondents have contested the case and filed the Counter Affidavit. It has further been alleged in the Counter Affidavit that the Extra Departmental Branch office Raunakala is situated in jurisdiction of Hanumanganj Sub Post Office Basti Division-Basti. There are two posts in the Branch office Raunakala one is of G.D.S.B.P.M. and another post of G.D.S. Mail Deliverer. The post of G.D.S.B.P.M. fell vacant w.e.f. 14th November, 2002 due to put off duty of Sri Ravish Kumar probationary appointed G.D.S.B.P.M., Raunakalan. Sri V. K. Tripathi G.D.S., Packer, Rayath was engaged in stop gap arrangement on the post of G.D.S.B.P.M., Raunakalan. And, thereafter, Sri V. K. Tripathi engaged the applicant on the post of G.D.S.B.P.M., Raunakalan on his own risk and responsibility as his substitute. That the applicant was not appointed after observing the prescribed procedure for recruitment to the post of G.D.S.. Moreover, the appointment of the applicant was purely on *ad-hoc* stop gap arrangement as a substitute. In view of



the policy of the Director General, Posts, New Delhi has issued instruction under the policy of the department that no vacant posts of G.D.S. may be filled up in the office having two hands or more till further instructions issued by the higher authority of the department. And that no substitute be allowed to work on the vacant post of G.D.S. including short term vacancies. That Sri Jang Bahadur regularly selected and appointed as G.D.S.MD/MC of Raunakalan was ordered to perform the duties of the vacant post of G.D.S.B.P.M. Raunakalan in addition to his own duties and disengaged the applicant without engaging any other substitute. Aggrieved from this order the applicant filed O.A. No. 1063 of 2003 before C.A.T. Allahabad Bench and *ad-interim* order was passed by the Tribunal in favour of the applicant. On the strength of the Interim Order applicant continued to work on the post of G.D.S.B.P.M., Raunakalan, the O.A. No. 1063 of 2003 was finally decided with direction to the respondents to decide the representation of the applicant and to consider the claim of the applicant for regularization. In pursuance of the direction of the Tribunal in O.A. on dated 25th May, 2004 the applicant had submitted his representation for his regularization on the post of G.D.S.B.P.M., Raunakalan on dated 03rd August, 2004 and the same has been decided by the competent appointing authority i.e. the

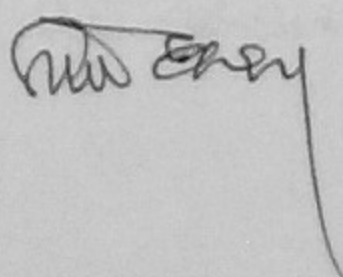


then Superintendent of Post Offices, Basti Division-Basti. A reasoned and speaking order was passed on the representation of the applicant on 14th September, 2005. The representation of the applicant was decided in view of the rules and instruction of the department and also in view of the various judgments of the Hon'ble Supreme Court and the representation of the applicant was rejected, since there was no scheme available with the department for regularizing the persons who have been engaged in stop gap arrangement. Applicant being a habitual litigant has again filed O.A. No. 1194 of 2005, in that O.A. also Interim Order was passed in favour of the applicant on 29th September, 2005. That the order dated 14th September, 2005 was stayed and direction was given to decide the representation by the competent authority and the then Superintendent of Post Offices, Basti Division Basti decided the representation and the decision was self explanatory and speaking one and as such there was no occasion with the department to permit the applicant to continue over the post and pay him without the policies and instruction of the department. That the approval for terminating the services of the applicant has also been given by the Post Master General, Gorakhpur region Gorakhpur. That the order dated 10th October, 2006 which is under challenge is the continuance of the earlier order and hence no fresh order was passed, it is wrong to

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allege that separate order was passed. That the O.A. No. 1194 of 2005 is still pending before the Tribunal and no stay is operating for continuance of the applicant and this second O.A. is not maintainable, that the O.A. lacks merits and liable to be dismissed.

4. We have heard Mr. A. K. Dave, Advocate for the applicant and Mr. Saurabh Srivastava, Advocate for the respondents and perused the entire facts of the case. As per averments made in the O.A. it is evident that the applicant has alleged that on termination of the services of Mr. Ravish Kumar in the month of November, 2002 as G.D.S.B.P.M. Raurakala. Respondents directed Sri V. K. Tripathi G.D.S. Packer, to work on the post of G.D.S.B.P.M. on the stop gap arrangement and Mr. V. K. Tripathi joined as G.D.S.B.P.M., Raurakala on 22nd November, 2002. This fact has been admitted by the respondents also and further it has also been alleged by the applicant that Sri V. K. Tripathi was not willing to work as G.D.S.B.P.M., Raurakala due some unavoidable family circumstances. It has further been alleged by the applicant himself that Sri V. K. Tripathi engaged the applicant as substitute vice him on his own risk and responsibility to work as G.D.S.B.P.M., Raurakala and handed over the charge to the applicant on 23rd November, 2002. It is undisputed fact that the applicant was not appointed by the



respondents/competent authority on the post of G.D.S.B.P.M., Raurakala, rather Sri V. K. Tripathi engaged the applicant to work as G.D.S.B.P.M. Raurakala. And as Sri V. K. Tripathi was not willing to discharge the duties of G.D.S.B.P.M., Raurakala, hence he engaged the applicant. Hence the engagement of the applicant was made by Sri V. K. Tripathi, G.D.S. Packer Rayath to work as G.D.S.B.P.M., Raurakala on his own responsibility. It is a different matter that the applicant continued to work on that post for considerable long period and lastly the applicant continued to work on that post on the strength of Stay granted by the Tribunal in O.A. No. 1063 of 2003 the applicant worked for a very short period prior to the order passed by the Tribunal in O.A. No. 1063 of 2003. That in the year 2003 when the applicant was expecting termination of his service in the year 2003 then the applicant filed O.A. No. 1063 of 2003 and this O.A. was disposed of on 25th May, 2004. It was ordered in that O.A. that in case applicant filed representation along-with documents in support of his claim for regularization, the competent authority shall look into the grievance of the applicant and take the appropriate decision in accordance with the scheme of regularization, if any, within a period of two months from the date of receipt of the representation. It has also been provided that pending

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decision of the representation, the applicant may be allowed to continue, if he has not been disengaged by now. It can be inferred that the later on the order passed in the O.A. on 25th May, 2004 the applicant continued to work on the strength of this order. In pursuance of the direction of the Tribunal in O.A. No. 1063 of 2004 applicant filed a representation to the respondents and the representation was decided by the Superintendent of Post of Offices Basti, division, Basti on 14th September, 2005 and the representation of the applicant was rejected by passing a reasoned and speaking order. It has also been observed in the body of the order that in view of the judgment of Hon'ble Apex Court and guidelines of DOPT it is not possible to permit Sri A. K. Tripathi to work on the post of G.D.S.B.P.M., Raunakala. It has been argued by learned counsel for the applicant that as the order dated 14th September, 2005 was passed by the then Superintendent of Post Offices at the time when his orders for transfer were received and hence the Senior Superintendent of Post Offices, Gorakhpur division vide order dated 16th September, 2005 stayed the operation of the orders passed by Superintendent of post office in between 01st September, 2005 to 15th September, 2005. Learned counsel for the applicant also argued that the order passed on 14th September, 2005 was stayed and

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hence the applicant continued to work on that post in pursuance of the order passed by the Senior Superintendent of Post Office, Gorakhpur division. It is also material that Superintendent of Post Office, Basti division Basti passed an order on 07th October, 2005 reference has been given of some correspondence of the Senior Superintendent of Post Offices, Gorakhpur division and the order dated 14th September, 2005 was cancelled with immediate effect and afterwards applicant continued to work on that post on the strength of the order passed by the Tribunal in the O.A.. It has been argued by the learned counsel for the applicant that as the engagement was not terminated hence the applicant has continued to work as G.D.S.B.P.M.. Annexure-A-1 is the order passed by the Superintendent of Post Offices, Basti division Basti on 10th October, 2006 and reference has been made of the order No. 439 Raunakala and by this order the Superintendent of Post Office, Basti division Basti disengaged the applicant with immediate effect. After this order also O.A. No. 1194 of 2005 was instituted and the O.A. was decided at the admission stage and interim order on dated 29th September, 2005 was also granted in favour of the applicant and the direction was also given to the respondents to initiate action in accordance with the order passed on 16th September, 2005 and further

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ordered that the legality and validity of the order dated 14th September, 2005 will also be seen while passing of the final order. Hence the applicant continued on the strength of the stay order.

5. It has been argued by learned counsel for the applicant that as the applicant had been working continuously as G.D.S.B.P.M. w.e.f. 23rd November, 2002 hence he is entitled to be regularized. We have already stated above that the appointment of the applicant was neither temporary nor on *Ad-hoc* basis but the applicant was only engaged as G.D.S.B.P.M. Raunakala by Sri V. K. Tripathi an incompetent person. And subsequently, the engagement of the applicant was terminated with immediate effect. And the applicant is continuing on the post of G.D.S.B.P.M. on the strength of stay order granted by the Tribunal. In this connection learned counsel for the respondents cited land mark judgment of Hon'ble Supreme Court reported in (2006) 4 SCC 1 Secretary, State of Karnataka and Ors. Vs. Uma Devi (3) and Ors. and it has been held by the Hon'ble Apex Court that *"Phenomenon of 'litigious employment' which had arisen due to issuance of such directions by High Courts, and even Supreme Court, highlighted - Held, merely because an employee had continued under cover of an order the Court, under 'litigious employment' or had been*

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continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made by following a due process of selection as envisaged by the relevant rules. - It is further not open to Court to prevent regular recruitment at the instance of such employees - Unsustainability of claim to permanence on basis of long continuance in irregular or illegal,.." In view of the judgment of Hon'ble Supreme Court if the applicant continued to work on the post of G.D.S.B.P.M. on the strength of an Order passed by the Tribunal then no special right or title will be conferred on the applicant and the appointment of the applicant was not made by the competent persons but he was only engaged by Sri V. K. Tripathi an incompetent person. Moreover, the applicant's appointment was not made in regular manner but he was only engaged.

6. Learned counsel for the applicant argued that the appointment of the applicant was under the relevant rules and learned counsel for the applicant cited Swami's Postal ED Staff rule 15 (iii) it will be appropriate to reproduce relevant provision:-

"(iii). Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalized, a provisional appointment may

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be made, in the form annexed (Annexure-B). It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment."

We are of the opinion that the applicant is not covered under rule 15 (iii) because he was not appointed by the competent person he was engaged by an incompetent person, Sri V. K. Tripathi was ordered to look after the work of G.D.S.B.P.M. Raunakala on stop gap arrangement as substitute and as Sri V. K. Tripathi due to personal reasons was not in a position to perform the duties of G.D.S.B.P.M., Raunakala hence he engaged the applicant on that post on his own risk and responsibility and the appointment of the applicant was not made even on provisionally by the competent person. Under these circumstances if the appointment is illegal *ab-initio* then no right or title will be conferred merely on the ground that he continued for a long period. For some period applicant worked on that post on the strength of the stay order passed by Tribunal and in view of the judgment of Hon'ble Apex Court no right or title will be conferred on the applicant. Moreover, learned counsel for the applicant cited a judgment of Hon'ble Apex Court reported in 1978 SCC 851 Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi & Ors. But this

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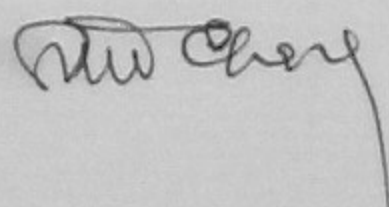
judgment is not applicable to facts of the present case. The engagement of the applicant was made by a incompetent person hence no benefit can be given to the applicant on the basis of this Judgment.

7. Learned counsel for the respondents also cited a judgment of Hon'ble Apex Court reported in 2006 (8) SCC 920 Supreme Today Chief Commissioner of Income Tax, Bhopal & Ors. Vs. M/s Leena Jain and Ors. it will be relevant to reproduce the operative part of this judgment which as follows:-

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

(Signature)

In view of the above judgment a person appointed illegally by an incompetent person expected to know the consequences. Applicant was aware of the fact that Sri V. K. Tripathi is not competent to make appointment of the applicant hence he was knowing the consequences of his engagement. It is established fact that the engagement of the applicant was not according to rules and law. And applicant was only engaged by an incompetent person hence no right or title will accrued in favour of the applicant merely on the ground that he continued from 23rd November, 2002. In the year 2003 applicant filed an O.A. and afterwards he continued on the strength of stay order passed by this Tribunal. The Hon'ble Apex Court further held in case of (2006) 4 SCC 1 Secretary, State of Karnataka and Ors. Vs. Uma Devi (3) and Ors. *"that incase there is regular appointment and person continued to work for ten years or more, but without the intervention of the orders of courts or tribunals, may have to be considered for regularization on merits in the light of the principles laid down in this case."* Hence in view of the judgment of Hon'ble Apex Court if the appointment is made by the competent person and such person continued for ten years or more without intervention of Court or Tribunal then he has got a case for consideration by the respondents, but in the present case the applicant



worked for couple of months and, thereafter, he obtained an interim order in his favour in the O.A. hence the continuance of the applicant was litigious employment and no right or title will accrued to him.

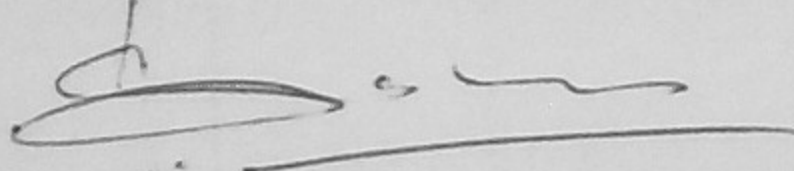
8. Under these circumstances we are of the opinion that the applicant was engaged by an incompetent person and respondents passed an order of disengagement of the applicant with immediate effect, later on he continued on the strength of the order passed by this Tribunal hence the applicant can not be permitted to work on the post. Merely because he has worked for number of years, the respondents are not bound to consider the case of the applicant for regularization, the order was passed by the respondents on dated 10th October, 2006 is valid one and there appears no justification to interfere in that order. It is a wrong impression of the applicant that the order passed on the representation of the applicant on 14th September, 2005 stand set aside. The order is still valid and the order is reasoned and speaking one. There is no flaw in the order and by subsequent order on 10th October, 2006¹ the engagement of the applicant was disengaged with immediate effect. Under these circumstances applicant has no case.

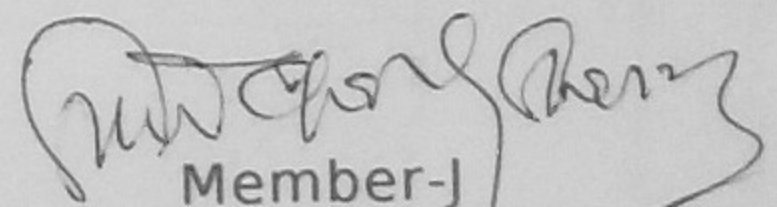
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9. For the reasons mentioned above we are of the opinion that the applicant was appointed as G.D.S.B.P.M. by an incompetent person, he was not appointed either on *Ad-hoc* or temporary basis by the competent person but the applicant was engaged by one Sri V. K. Trivedi an incompetent person, Respondents ordered Sri V. K. Tripathi to look after the work of G.D.S.B.P.M., Raunakala instead of working Sri V. K. Trivedi, he engaged the applicant as G.D.S.B.P.M. by all circumstances it appears that the engagement of the applicant was not under the rules even the appointment of the applicant was not made by the competent authority. There appears no ground to quash the impugned order and for giving direction to consider the case of the applicant for regularization. It is for the respondents to consider the case of the applicant if the vacancies are advertised but he has no right for consideration on the post and he can not be regularized, O.A. lacks merits and liable to be dismissed.

10. O.A. dismissed. No order as to costs.


Member-A


Member-J

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