

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 16th day of Nov 2010

Original Application No. 1243 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

**Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)**

*Tej Bahadur Yadav, S/o Sri Daya Shanker Yadav, Resident of Village
& Post-Patulaki, Tehsil-Lalganj, District-Mirzapur.*
..... **Applicant**

Present for Applicant : **Shri A. Tripathi, Advocate**
Shri R.K. Dixit, Advocate

VERSUS

1. *Union of India, through its Secretary (Posts) Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.*
2. *Superintendent of Post Offices, Mirzapur Division, Mirzapur.*
3. *Assistant of Superintendent of Post Offices, West Sub Division, Mirzapur.*
4. *Rajendra Prasad Dubey, Extra Departmental Branch Post Master (E.D.B.P.M.) Mirzapur.*
..... **Respondents**

Present for Respondents : **Shri Himanshu Singh, Advocate**

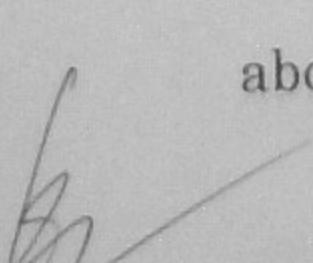
O R D E R

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member (J)

Three names, Daya Shankar Yadav, Tej Bahadur Yadav (applicant in this OA) and Manoj Kumar Yadav, have been referred to in the entire pleadings. The applicant Tej Bahadur Yadav claims that it was by mistake that his name has been shown as Manoj Kumar

Yadav in the very first engagement of the applicant, while the respondents contend that Manoj Kumar Yadav is different.

2. Be that as it may. The facts are short and simple. Daya Shankar Yadav, was a regular EDDA, Patulaki and respondent No. 3, the Asst. Superintendent of Post Offices, West Sub Division, Mirzapur, had directed the said Daya Shankar Yadav to engage, at his risk a substitute to perform the duties of EDDA, Patulaki during the period the said Daya Shankar Yadav was engaged in a group D post in the Varanasi-Mirzapur-Shaktinagar Mail Line. According to the applicant, as aforesaid, he was engaged by his father Daya Shankar Yadav though in the communication, his name has been shown as Manoj Kumar Yadav. His request for effecting amendment was stated to have, no doubt, been agreed to by the authorities, but before the same could be effected, his services were terminated after 89 days (i.e. from 01-03-2006 to 28-05-2006). It is to be borne in mind that as per the respondents, during this period, it was Manoj Kumar Yadav, who worked as EDDA, Patulaki. In that place, one Shri Shiv Shankar Yadav was appointed from 29-05-2006 upto 25-08-2006. Neither the applicant nor the said Manoj Kumar Yadav (if the said Manoj Kumar is not the applicant himself) worked during this period. After the expiry of the aforesaid tenure of 89 days, w.e.f. 27-08-2006, the applicant was engaged by the said Daya Shankar Yadav. By this time, the post held by Daya Shankar Yadav as Group D having been abolished, there was a dispensation of service of the applicant here



w.e.f. 24-10-2006, which meant that instead of 89 days, the period of engagement shrunk to 59 days.

3. The applicant claims the following relief for having worked as stated above from 01-03-2006 upto 24-10-2006 with intermediate break in between:-

"(i) To, issue an order, rules or direction for quashing and setting aside the impugned verbal order of termination of the respondent no.3 by which the respondent no.3 is going to terminate the engagement of the applicant on the said post of Gramin Dak Sewak Delivery Agent/Mail Carrier Patulaki by making further substitute/Ad hoc arrangement.

(ii) To issue an order, rule or direction in the nature of mandamus directing the respondents to allow the applicant to continue to work on the said post till the putting back of the regular incumbent on the said post of completion of 89 days as the applicant fulfilled all the eligibility condition for the said post and has served for considerable period about 6 months regularly with the entire satisfaction of his superior and make the payment of salary as usual as and when due."

4. Respondents have contested the O.A. According to them, the applicant was never engaged through proper selection process and had merely been engaged on risk and responsibility of the regular incumbent of department. Since no appointment order has been issued in favour of the applicant as such the question of issuance of any notice prior to his termination does not arise. Thus the very claim of the applicant is totally vague, misleading and as such liable to be repealed by the Hon'ble Court. As already stated and explained in the preceding paragraphs that since one post of Group 'D' in Varanasi-

Mirzapur-Shaktinagar Mail Line has been abolished, as such the regular incumbent Sri Daya Shankar Yadav, who was earlier directed to engage some one as '*Avagy*' on his risk and responsibility and look after the work of the Group 'D' in Varanasi-Mirzapur-Shaktinagar Mail Line, has been ordered to join at Patulaki Post Office as GDS(EDDA). The very submission made by the applicant that he has been replaced by another ad hoc/substitute employee is totally misconceived, misleading and based on hypothetical presumption and in any view of the matter cannot be substantiated. All actions taken by the respondents are in conformity with the relevant rules and instructions on the subject and as such the O.A. is liable to be dismissed with costs as the applicant has neither produced before the Hon'ble Court any appointment order issued by the Postal Department in his favour nor has enclosed any termination order. The sole claim of the applicant is based on oral submissions and hypothetical presumptions and as such the O.A. deserves to be dismissed as having without any substantial documentary evidence and merit.

5. In between, short counter and rejoinder were exchanged in respect of consideration of interim relief, which has now no relevance as the case is finally decided.

6. Counsel for the applicant at the very outset submitted that in this case there is a private respondent R-4, on whom the applicant effected service of notice on the direction of the Tribunal, but the said

R-4 is stated to have refused to receive the notice and to this extent an affidavit has been filed. R-4 is the EDBPM Mirzapur.

7. Counsel for the applicant argued that the applicant being a substitute of the regular incumbent, he must be allowed to continue till the regular incumbent joins back or till the post is regularly filled up. According to him, the applicant fulfills all the eligibility conditions for the post of EDDA.

8. Counsel for the respondents submitted that the applicant came only as engaged by Daya Shankar Yadav and he has no right to continue beyond the stipulated period of 89 days at any spell. He was not issued with any appointment letter. The allegation that both Manoj Kumar Yadav and the applicant are one and the same has not been proved. He having not been appointed by following the prescribed selection process either for provisional appointment or on regular basis, he has not crystallized any right to continue.

9. Counsel for the applicant in his rejoinder stated that the practice of appointment for a tenure of 89 days should be put a full stop.

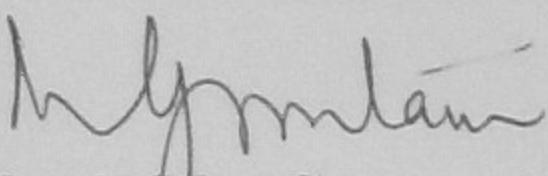
10. Arguments were heard and documents perused. The post of GDS is filled up by two proper methods – on provisional basis, and on regular basis. In both the cases, due notification is issued and selection is made on scientific basis, giving due regard to merit and

other conditions such as arrangement for accommodation in respect of the post of EDBPM and other income, local candidate wherever applicable are also strictly to be followed. In the case of the applicant, admittedly he was engaged only for 89 days at the own risk of Daya Shankar Yadav. There was one more Shiv Shankar Yadav, who had been engaged after the lapse of 89 days mentioned above. Even if the applicant happened to be one and the same as Manoj Kumar Yadav, and even if he had function on various spells, he cannot claim that he has crystallized any right to be appointed without due process of law. It is left to the authorities to fill up the vacancy by making local arrangement with other GDS Post Office or main post office. The applicant cannot claim that he should be allowed to continue till regular incumbent joins. Thus, the claim of the applicant is totally misconceived. The OA is therefore, **dismissed**.

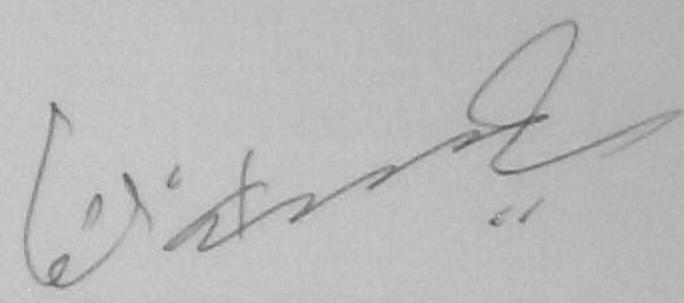
11. Before parting with this case, we would like to advise the Chief Post Master General, UP Circle to undertake the exercise on periodical basis, to ascertain as to the existence of vacancies in GDS posts on account of non-filling up of the same by the stipulated provisions of provisional or regular appointment and attempt should be made to see that these posts are filled as per the prescribed procedure. If a GDS is asked to perform the duties of Group D, visualizing the approximate time when the individual so appointed in Group D would not be available, and strictly adhering to the time schedule, the vacancy should be filled up purely on a stop gap arrangement indicating that such an appointment shall not vest with

6

the individual any right to continue on ad hoc or provisional basis. Where, however, it is clear that the vacancy would be one of regular nature, the same should be filled up by means of regular recruitment, or conferment of regularization of the provisional appointees who have put in more than three years of service on provisional basis, or by transfer from the same unit or outside unit as per the transfer policy maintained by the Department, or any other approved mode. It is hoped that the Chief Post Master General would bestow his attention to streamline the procedure.



(Manjulika Gautam)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil