

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO.149 of 2006

Allahabad, this the 28 day of January, 2009.

**Hon'ble Mr. A.K. Gaur, Member-J
Hon'ble Mrs. Manjulika Gautam, Member-A**

1. Dinesh Kumar Mishra S/o Shri Ram Murti Mishra R/o Village Charwa Khurd, Post Charwa, District Kausambi.
2. Diwakar Nath Tiwari, S/o Sri Late Ram Udit Tiwari, R/o House No.500/2/10, Rama Nand Nagar, Allaapur, District Allahabad.

...Applicants.

By Advocate: Shri K.K. Mishra

Versus

1. Union of India through its Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Post Master General, Post Offices, Allahabad.
3. The Senior Superintendent of Post Offices, Allahabad, District Allahabad.
4. Senior Post Master, Post Offices, Allahabad.
5. Assistant Superintendent of Post Offices, Central Allahabad.
6. Sheo Sampat Lal Srivastava, A/a 53 years, S/o Shri Sheo Mohan Lal, R/o 139 Chak Niratul, Allahabad.
7. Rajendra Prasad, A/o 42 S/o Shri Ram Ujagir, R/o Village & Post - Achhale Distt. Allahabad.

...Respondents.

By Advocate : Shri S.C. Mishra
Shri Saurabh

O R D E R

Delivered by Hon'ble Mr. A.K. Gaur, Member-J :

In the instant case, the applicants have prayed for considering their case for regularization/absorption in the Postal Department on Class III as regular E.D. Stamp Vendors in Allahabad and also seeking a direction commanding the respondent No.2 and 3 to consider and

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decide the representation of the applicant dated 10.2.2005 and 21.10.2005 (Annexure-A-7 and A-8 to the O.A.).

2. The facts of the case are that the applicants are discharging their duties as E.D. Stamp Vendors since 1991 and 1995 without any break in Allahabad Division. It is alleged by the applicants that they have already completed about 13 and 14 years of their services without their being any regularization. The names of the applicants have already been registered in the Employment Exchange on 10.12.1990 and 5.01.1991. The applicants have been claiming their regularization before respondent No.2, 3 and 4 soon after completing three years of service, but no heed was paid to the same by the respondents. The respondents have issued experience certificate to the applicants which clearly indicates that prima-facie posts are in existence and still the applicants are working in the department as substitutes, on temporary basis, which is against the Constitutional mandate enshrined under Article 14, 16, 21 and 39 of the Constitution of India. Vide representation dated 13.1.2005, the Secretary of the union wrote a letter to respondent No.3 highlighting the grievance of the applicants and requested that unless and until the persons already employed and working since long time are not regularized/absorbed, the no fresh appointment may be done (Annexure-A-6). The grievance of the applicants is that junior persons to the applicants namely Jitendra Kumar Singh, who had worked for about 3 & 4 years, has been appointed on regular basis as B.P.M.

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post office, Bamrauli Allahabad. Jitendra Kumar Dhusia E.D. Packer, Rajendra Prasad Dwivedi, E.D. Packer and Smt. Mamta Khare have worked for about 2 and $\frac{1}{2}$ years have been given regular appointment in the department in the year 2001-2002. According to the applicants Shri Anil Kumar Yadav who completed only about one year's of service was already given regular appointment and is still working in Allahabad Division. In any view of the matter, the action of the respondents is wholly arbitrary, illegal and discriminatory. The representation submitted in the month of November, 2004, by the applicants clearly stated that the junior persons namely Jitendra Kumar Singh who had three years of service, Rajendra Prasad Dwivedi one year service and Smt. Mamta Khare about 2 and $\frac{1}{2}$ years service at their credit, have already been absorbed/regularized and are drawing regular salary. The sole grievance of the applicants is that no reply has been given by the respondents to the said representation of the applicants as yet. It has been submitted by the applicants that the appointment of outsider/fresh appointment and regularization of juniors is clearly hit by Rule 20 Sub Rule 4 and 5 of Postal E.D. Staff Service Rules. The decision rendered by Hon'ble Supreme Court in the case of **State of Haryana Vs. Piara Singh** has strongly been relied upon by the applicants in order to get the relief of regularization. It is urged on behalf of the applicants that in the present case persons junior to the applicants appointed in the similar capacity i.e. after 2001-2003 have been given regular appointment ignoring the claim of

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the applicants. The respondents have given complete go-bye to the provisions of Rule 20 Sub Rule 3, 4 and Rule 22 exceptions (i) (ii) Rule 23 of Postal E.D. Staff Service Rules. The respondents have not at all considered the representation of the applicant dated 21.10.2005 (Annexure-A-8) and therefore, the applicants were constrained to file this OA.

3. In the reply filed by the respondents, it is submitted that this Tribunal vide its interim order dated 17.2.2006 directed the parties to maintain the Status-quo and in compliance thereof the applicants are still working as substitute on the post of G.D.S. S.V. at Mahatma Gandhi Marg, Allahabad. According to the respondents the applicants have no case for regularization and as per rules substitutes have no right for their regularization on the basis of their longer arrangements as substitutes against G.D.S. posts. The applicants were never appointed by following the procedure prescribed for G.D.S. but were engaged as substitutes in stopgap arrangement. The candidates who were provisionally appointed after following the procedure prescribed for regular appointment on the post of G.D.S. are entitled for absorption/alternate appointment provided they have completed more than three years of regular service. The applicants were engaged, as substitutes against the regular incumbents, who were officiating against the departmental posts, have no right for their regularization. The respondents have placed reliance on

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the decision of Hon'ble Supreme Court rendered in **U.O.I and others Vs. Debika Guha and others - 2000 (2) SC SLJ 132** and submitted that substitutes have no right for regular appointment.

4. In the rejoinder filed by the applicants, the applicants have reiterated that they are discharging their duties regularly as Class III employees in the department since 1991 and 1995 respectively without any break. According to the applicants, they have already completed more than 13 to 14 years of continuous service but they have not been given any opportunity to appear in the departmental examination for the reasons best known to the respondents. It is also alleged by the applicants that in view of the decision of Hon'ble Supreme Court reported in **1992 Vol. II UPLBEC page 1353 - State of Haryana and others Vs. Piara Singh and others**, they must be regularized. In the said case, Hon'ble Supreme Court has held that a person who have completed regular service of 10 years or more are entitled to be regularized on the basis of Seniority-cum-Suitability. The departmental Circular clearly empowers such persons to appear in the departmental examination for their regularization but no such opportunity has given to the applicants.

5. In the supplementary counter affidavit filed by the respondents it is submitted that Sri Sampat Lal and Sri Rajendra Prasad are regular incumbents and are working against departmental posts and as such the post in question cannot be construed as vacant. Since the regular

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incumbents of the post have been returned to their substantive post, it is not possible to continue the substitute arrangement. In paragraph 14 of the rejoinder, it is submitted that as per para 5, 6 and 7 of the DG (Posts) letter dated 21.10.2002, a person, who has not been appointed after following the procedure in accordance with recruitment rules have no right for regularization on the basis of their longer arrangement. A photocopy of the D.G. (Posts) letter dated 21.10.2002 has been filed as Annexure-1.

6. We have heard Shri R. Mishra holding brief of Shri K.K. Mishra, learned counsel for the applicant and Shri S.C. Mishra, learned counsel for official respondents and Shri Saurabh for private respondents and perused the written arguments submitted by the parties counsel.

7. Learned counsel for the applicant has vehemently argued that the applicants were given appointment after sending their names from the Employment Exchange and they are working since 1991-1995 till today. He also argued that juniors namely Jitendra Kumar Singh, Smt. Mamta Khare and Shri Anil Kumar Yadav who have worked for a period of about 1 to 3 years and, who were also appointed in similar capacity have been regularized, but the respondents have committed serious discrimination in not considering the case of the applicants for regularization inasmuch as that they have already completed more than 13 to 14 years of service in the department. The statement of fact mentioned in the OA in para 4.9 to 4.13 in this regard has

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not at all been controverted or denied by the respondents in their counter reply. Learned counsel for the applicant would further contend that in view of the decision rendered by Hon'ble Supreme Court in 07 judges decision rendered in 2006 Vol 4 SCC 53 - State of Karnataka Vs. Uma Devi and 2006 (6) SCC 310 - Mineral Exploration Corporation Employee's Union Vs. Mineral Exploration Corpn. Ltd, if the employees have continued to work for 10 years or more they are liable to be considered for their regularization. 2006 (6) SCC 430 R.S. Garg Vs. State of U.P. has also been relied upon by the applicants in order to buttress the contention that since the applicants have continued to work for more than 13 to 14 years, their case for regularization must be considered by the respondents.

8. It has also been argued by learned counsel for the applicants that in view of 2003 (2) UPLBCEC 1573 - Shaukat Ali Vs. Allahabad Development Authority & others, if a statement of fact made in the OA has not been controverted or denied in the reply, the same shall be deemed to have been admitted. In this regard paragraph 43 of the judgment rendered in Shaukat Ali's case (supra) is being reproduced hereunder: -

"It is well settled that a bald denial to a pleading will tantamount to an admission vide Bhagat and Co. Vs. East India Trading Co., AIR 1964 SC 538 (Para 11). A specific plea has to be given a specific reply, and a mere bald denial is not sufficient. This is clearly provided for a Order VIII, Rule 5 CPC, and even though the CPC is not in terms applicable to writ jurisdiction many of its general principles apply. In our opinion, the principle of Order VIII, Rule 5 CPC, applies to writ petitions also. Hence, we are of the opinion that the

averments of the petitioners in Para 21 of Writ Petition No.23281 of 2001, that the A.D.A. has not provided any amenity nor carried out any development activity in respect of the plots in question, and all amenities and development have been provided and done by the petitioners themselves through their own resources, is correct."

9. Learned counsel for Private Respondent No.6 and 7 submitted that both the applicants are not regularly selected Class III employees and they have not been appointed by way of regular process of selection. Both these persons have been appointed as substitute by A.S.P.O., Allahabad and they are continuing in service under the grab of the interim order dated 17.2.2006 passed by this Tribunal. It is argued that the applicant's continuance in the service under the grab of Stay order would not give any benefit to them. The respondent No.6 and 7, are officiating against departmental post in order to coup-up with the work, the applicants were appointed as substitutes having no right of regularization on the basis of their longer arrangement in the post.

10. We have also heard learned counsel for the Official Respondent as well as Private Respondents. In support of their contention, they have relied upon the following decisions of Hon'ble Supreme court:-

- (i) 2006 (1) SCC 667 - State of U.P. Vs. Neeraj Awasthi.
- (ii) JT 2006 (2) SC 137 - UPSC Vs. Girish J. Lal.
- (iii) JT 2006 (1) SC 84 - State of Karnataka Vs. K.G.S.D. Canteen.
- (iv) 2007 (1) SCC (L&S) 641 - Accounts Officer Vs. K.V. Ramanna & ors.

11. Learned counsel for the respondents further argued that the applicants, even if have worked for a longer

period, they cannot be regularized dehors the rules for selection as has been held in 2006 SCC (L&S) 753 - **State of Karnatka Vs. Uma Devi.**

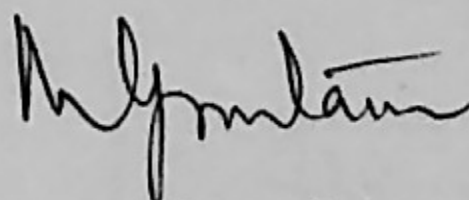
12. Having given our thoughtful consideration to the arguments advanced by the parties counsel, we are firmly of the view that regularization is not and cannot be a mode of recruitment by any State under Article 162 of Constitution of India and even if there was any such power, no appointment would be made in violation of statutory rules. This Tribunal and Hon'ble High court has no jurisdiction to frame a scheme by itself or direct the framing of scheme for regularization. We have also carefully seen the judgment reported in JT 2007 (2) SC 342 - **Yamuna Shanker Sharma Vs. State of Rajasthan**, wherein the Hon'ble Supreme Court maintained the decision of Division Bench of High Court, directing the respondents to consider the case of the applicant in accordance with the rules and not to deny the regularization merely on the ground of being overage. It is true that the facts enumerated in the OA, have not been denied or controverted by the respondents in their reply but still we cannot issue a blanket direction for regularizing the services of the applicants. We have also gone through the judgment of Hon'ble Supreme Court reported in JT 2007 (6) SC 562 - **Mahadev B. Khilare Vs. State of Maharashtra**, 2007 (6) SC 594 **K.V.S. Vs. Subramanyashwara and another**, JT 2007 (12) SC 179 - **U.P. State Electricity Board Vs. Pooran Chandra Pandey** and 2008 (5) SCC 241 - **Govt. of Andhra Pradesh &**

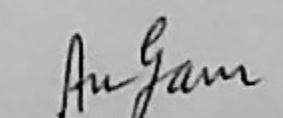
others Vs. K. Brahmanandam & ors. The respondents have not at all considered the pending representation of the applicants and the statement of fact enumerated in paragraph No.9 to 13 and 16 of the OA, have not been denied by the respondents in their reply.

13. Without entering into the merits of the case, we hereby direct the competent authority to consider and decide the pending representation as Annexure-A-6 and A-8 of the applicants by a reasoned and speaking order taking into account the provisions of departmental rules and several decisions rendered by Hon'ble Supreme Court in this regard, within a period of four months from the date of receipt of copy of this order. It is also made clear that till the disposal of the representation of the applicants, the interim order granted by this Tribunal dated 17.2.2006 shall be continued. While deciding the representation of the applicants, the OA may be treated as a part of representation.

14. No order as to costs.

Registry is directed to send certified copy of this order immediately to the respondents for necessary compliance.


Member-A


Member-J

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