

Copy of OA NO 481/2006

[Reserved]

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 18th DAY OF January 2012)

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)

ORIGINAL APPLICATION NO. 479 OF 2006
(U/S 19, Administrative Tribunal Act, 1985)

Santosh Kumar Singh, S/o Sri Shanda Prasad Singh, r/o Village & Post Bauri (Rampur) District Bhazipur, Presently working as E.D.D.A., as Kaithi Sub Post Office Varanasi.

.....Applicant

V R S U S

1. Union of India, through Secretary Ministry of Communication Department of Post Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices (East) Division Varanasi.
3. Assistant Superintendent of Post Office, Mughalsari, District Chandauli.

.....Respondents

Advocates for the applicants:- Sri Vinod Kumar.

Advocate for the Respondents: Sri Anil Dwivedi.
Sri Saurabh Srivastava.

ALONGWITH
ORIGINAL APPLICATION NO. 480 OF 2006

Om Prakash Tiwari, S/o Sri Baij Nath Tiwari, R/o Kusth Seva Asram Padhaw, District Varansi.

.....Applicant

V R S U S

1. Union of India, through Secretary Ministry of Communication Department of Post Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices (East) Division Varanasi.
3. Assistant Superintendent of Post Office, Mughalsari, District Chandauli.

W.C.B.

.....Respondents

Advocates for the applicants:- Sri Vinod Kumar..

Advocate for the Respondents: Sri Anil Dwivedi.
Sri Saurabh Srivastava.

ALONGWITH
ORIGINAL APPLICATION NO. 481 OF 2006

Vinay Das, S/o Sri Madhu Sudan Das, r/o Village Rupaspur, Post, Sahai Nagar, District Patna, Presently working as A.D.R. at Piari (Chaubeypur) Varanasi.

.....Applicant

V R S U S

1. Union of India, through Secretary Ministry of Communication Department of Post Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices (East) Division Varanasi.
3. Assistant Superintendent of Post Office, Mughalsari, District Chandauli.

.....Respondents

Advocates for the applicants:- Sri Vinod Kumar.

Advocate for the Respondents: Sri Anil Dwivedi.
Sri Saurabh Srivastava.

O R D E R

All the above mentioned O.As. involve the same controversy and the point for determination in all the three above mentioned O.As. are same, but the dates are different when these applicants were appointed/engaged in different Post Offices in the Capacity of Extra Departmental Delivery Agent and they were relieved from the post on the same or the different dates, but the question involved in the O.As. is the same, hence in order to avoid conflicting orders all the O.As. were

S. D. S.

interconnected and are decided by a common order. O.A. No.479 of 2006 is the leading O.A. in all the O.As. The order of relieving was passed by the respondents on 16th March, 2006.

2. In all the above mentioned O.As. the following reliefs were claimed:-

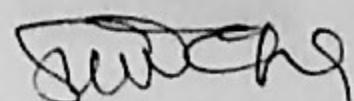
- i). *This Hon'ble Court may be pleased to set-aside the impugned order dated 16-3-2006 (Anexure-1 to the Original Application.)*
- ii). *This Hon'ble Court may be pleased to direct the respondents not interfere in the peaceful working of the applicant as E.D.D.A. at Dhaurahra, Sub Post Office, Varanasi.*
- iii) *Any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.*
- iv) *Award cost of the petition in favour of the applicant."*

3. The pleadings of the parties may be summarized as follows:-

It has been alleged by the applicants that they were initially appointed as Extra Departmental Delivery Agent (hereinafter referred to as EDDA) on different dates in different Post Offices at Varanasi. The post on which the applicants were appointed were lying vacant due to promotion of their predecessor in Group 'D' post and it has also been alleged by these applicants that, thereafter, from the date of their

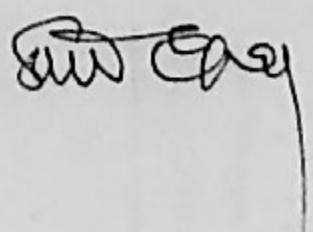
S. W. C. S.

engagement in the year 1997 these applicants had been continuously working with the department till date. That they took over the charge on different Post Offices in the year 1997 on the different dates. That the applicants were offered appointed on the post of EDDA after considering the qualification required for the post. That these applicants had been working continuously for about nine years and at no point of time applicants gave any occasion to the respondents to point out any irregularity or illegality, during this period the work and conduct of these applicants was always appreciated by the concerned authorities and they were granted Bonus, Increment & Bicycle Allowance till the date of filing of the O.A. by the respondents' department and even inspections have been conducted by the respondents on the different dates and the work and conduct of the applicants have been found satisfactory by the inspecting authority. The appointment was of the nature of alternative appointment and all the conditions were fulfilled prior giving appointment to these applicants by the respondents. That the applicants had been working as a regular employee and they never worked as a substitute employee. In the inspection notes recorded by the authorities it has not been pointed out/ordered referred that the applicants are working as substitute, even in the Gradation/Seniority list the name of these applicants have been shown and the seniority list was prepared showing the name of the applicants as regular employees of the

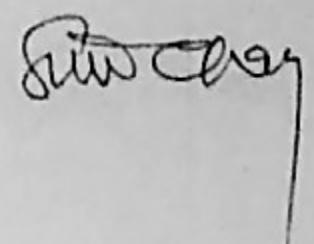


respondents' department. A notice was issued by the respondent No.3 on dated 16th March, 2006 and by that notice/order respondents terminated/relieved from the post of EDDA from the post on which they were working. That the applicants had completed more-than nine years of continuous service and their names have been shown in the Gradation/Seniority List as well as they were transferred on different dates and they were being treated as regular employees, hence their service cannot be terminated orally by issuing a show cause notice to them and it is violation of Article 14 and 16 of the Constitution of India. That no charge sheet or show cause notice was served to the applicant prior to passing of order of termination and it is violation of principle of natural justice and the opportunity of hearing must be provided in all circumstances to the applicants prior to passing the order of termination/relieving. And it has been done on the dictates of the higher authorities of the respondents'. That as no prior opportunity was provided, hence the order of termination is void and illegal and is liable to be quashed.

4. Respondents contested the case, filed Counter Reply and denied from the allegations made in the O.A. Separate Counter Replies have been filed in different O.As, but the contentions are identical. It has been alleged in Counter Reply by the respondents that after due promotion of



the predecessor to the cadre of Postman in the year 1997 from the date on which the applicants were engaged. But no order of appointment/engagement was issued in favour of these applicants and no order of appointment/engagement is available on record with the department. A letter was received from the respondents' department as a matter of policy regarding G.D.S. on 31st August, 2004 and the letter was received on 13th February, 2004 along-with the copy of the judgment and order passed by the Hon'ble High Court of Judicature at Delhi in Civil Misc. Writ Petition No.8615 of 2004 and Civil Misc. Writ Petition No.9282 of 2004 filed by Ms. Kamla Devi and Ms. Kamlesh, copies of the judgment passed by the Hon'ble High Court is on record as Annexure-CA-1, 2 & 3. And in view of the instructions given in the judgment by the Hon'ble High Court of Delhi and the same was circulated vide P.M.G., Allahabad letter dated 20th February, 2006 in order to review such cases and take necessary action in this regard. And on review of such matters it was revealed that the applicants had been working on the of EDDA since 1997 were neither provisionally nor regularly engaged/appointed on the said post and no order of appointment is available on record pertaining to these applicants in the file of the respondents. Vide order dated 16th March, 2006 the applicants were directed to produce the appointment letter, if any, but the applicants did not submit any appointment order on the post of EDDA on which they



had been working since April, 1997. The application was also submitted by the applicants for leave before the Sub Post Master for one week and remained absent from duty w.e.f. 20th March, 2006 onwards. That there was no order in favour of the applicants as regular or temporary appointment and no proper recruitment was conducted and no procedure was followed for giving appointment to these applicants on the said posts. In view of the instructions issued by the highest authority of the department and in view of the judgment of the High Court at Delhi it was ordered to the Sub-Post Master concerned in order to relieve the applicants and the Sub-Post Master concerned issued the relieving order of the applicants as outsider substitute person working on the post of EDDA at once and it was also ordered that incase outsider substitute person produce appointment order then the same should be sent for consideration. The applicants being outsider substitute who were neither engaged nor appointed and had been working on the post of EDDA without observing the procedure for recruitment and moreover, applicants failed to produce any appointment order issued by the office of the respondents. Under these circumstances in view of the notice issued on 16th March, 2006 the applicants inspite of filing reply and producing the appointment letter proceed on leave and, thereafter, remained absent from duty, and during the period of absent O.As. have been filed. It has also been alleged that no offer of appointment was given to the applicants

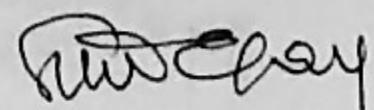
S. W. Elay

in the office of respondents as EDDA and hence the applicants had no right to claim for regularization on the post in view of the policy of the department. There are various judgments on this point that if the appointments have not been made by observing the prescribed procedure for recruitment and then the said appointee have no right to continue on the said post and the length of previous service will not accrue any right for regularization in favour of *ad-hoc* or temporary employees. There is no order till date in favour of these applicants to continue on the post and hence they were legally and validly removed from service in view of the order of the Hon'ble High Court of Delhi and other different judgments. That the O.A. lacks merits and liable to be dismissed.

5. In response of the Counter Reply of the respondents on behalf of the applicant Rejoinder Affidavit have also been filed. Supplementary Affidavits have also been filed on behalf of the parties which shall be considered at the relevant place.

6. We have heard Sri Vinod Kumar, Advocate for the applicant and Sri Saurabh Srivastava, Advocate for the respondents and perused the entire facts of the case.

7. It has not been alleged by these applicants specifically that any selection was conducted as per rules by the respondents in order to fill up



the vacant posts of EDDA. It has also not been alleged by these applicants that no appointment letter was issued in their favour. However, it has been alleged by the applicants that they were appointed/engaged on the post of EDDA in different Post Offices and we have enquired from the applicants' Advocate specifically to produce appointment letter of the applicant and we have also enquired that whether on giving appointment to these applicants on the post any procedure was followed and whether any applications were invited in order to fill up the vacant posts. The learned counsel for the applicants failed to produce any such appointment/engagement order and the learned counsel for the applicant also failed to show that the respondents have followed the procedure prescribed in the rules in order to fill up these vacant posts of EDDA, hence we have to presume that neither any applications were invited from the general public in order to fill up the vacant post of EDDA and it is also evident from the record that no appointment letter at all was issued in favour of the applicant by the respondents. On an inquiry to produce the copy of the appointment letter learned counsel for the applicant diverted out attention to Annexure No.2 and learned counsel tried to show that this is the appointment letter which was issued by the respondents in favour of the applicant. We have perused Annexure No.2 and we are of the opinion that from perusal of this documents it cannot be said that it is an appointment letter, it appears that it is some charge

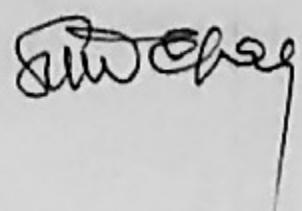
Sudhir Chay

report regarding receipt of cash and stamps on transfer of charge and it is a printed form as provided in rule 267 of Post and Telegraphs Financial Handbook, Volume -I, second edition and in this charge certificate the name of the applicants have been filled up on the proforma, hence it is an undisputed fact that neither any applications were invited in order to give regular appointment on the post of EDDA and no procedure for selection was conducted as per rules in order to fill up the post of EDDA and it is also a fact that in favour of the applicant no appointment letter was issued. But is an admitted fact that these applicants were working since 1997 from the date mentioned in the charge certificate and the applicants had been working on the post of EDDA. It is also a fact that a roll was also prepared in order to show the salary of the applicant Annexure-A-3 is the so called salary slip of the applicants. The learned counsel for the applicants argued that it is a pay slip and it was issued in favour of the applicants and these pay slips shows that Bonus, Cycle Allowances etc. were granted to these applicants. Learned counsel also argued that seniority list was issued by the respondents to show the seniority of the applicant. Moreover, it has also been argued by the learned counsel for the applicants that on different dates the applicants were transferred on different place and in these circumstances only inference can be drawn that the applicants were permitted to work on the post of EDDA in the capacity of regular employee, but at no point of time for the last eight or

Deputy

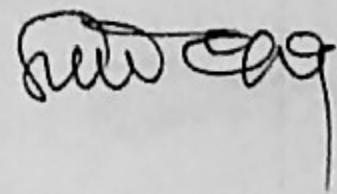
nine years and no appointment/engagement order of these applicants were issued by the respondents' authorities and applicants also cannot be called as Substitute, because they were not posted in the capacity of Substitute, but they had been working in the capacity of regular employee on the post of EDDA. We have stated above that neither any application was invited in order to fill up the vacant posts of EDDA nor any selection was conducted for the appointment of the EDDA and moreover no appointment letters were issued by the respondents in favour of the applicants and it can only be inferred that the applicants position was as a 'Daily Rated Employee'. Annexure-3 shows that it is not a pay slip rather it is roll issued for different months and in this roll the salary of the applicants were shown and it cannot be said that it is the pay slips issued in favour of these applicants. Annexure-4 is the alleged seniority list, but it is seniority list of Daily Rated employees working with the respondents department and in our opinion it cannot be said on the basis of these documents that any right or title accrued in favour of the applicants and the position will remained the same and the applicants were only Daily Rated Employees and they cannot be treated as regular employee of the respondents' department.

8. It has been alleged by the learned counsel for the respondents that there was no appointment letter issued in favour of the applicants and

A handwritten signature in black ink, appearing to read "Shrivastava".

they were only Dailway Rated employees. Learned counsel also attracted our attention towards judgment of Hon'ble High Court Judicature at Delhi passed in Civil Misc. Writ Petition No.8615 of 2004 and Civil Misc. Writ Petition No.9282 of 2004. These writ petitions were filed by Ms. Kamla Devi and Ms. Kamlesh challenging the order passed by this Tribunal. On behalf of these applicants the O.As. were filed before the C.A.T., Principal Bench, New Delhi in order to seek regularization of their service on the ground that they are continuing as EDDA in the respondents department and the O.As. were dismissed by the C.A.T., Principal Bench, New Delhi and the order passed by the C.A.T., Principal Bench, New Delhi was challenged in the writ petition before the Hon'ble High Court of Delhi and the writ petitions were dismissed by the Hon'ble High Court with observation that there is no merit in these petitions and in pursuance of this judgment of the Hon'ble High Court of Delhi, respondents' department issued instructions to the Post Offices to review such matters and pass appropriate orders in the light of the judgment of the Hon'ble High Court of Delhi.

9. Learned counsel for the applicant tried to distinguish the case of these applicants from the case of the petitioner of the writ petition before the Hon'ble High Court of Delhi. Learned counsel for the applicant argued that for the post held by the petitioner of the writ petition regular

A handwritten signature in black ink, appearing to read "J.W. S.D." or a similar variation.

selection was conducted and the applicants also participated in the selection and as the applicants were not selected, hence they were not permitted to continue on the post and they were relieved so as to selected persons may take over the charge. Learned counsel for the applicant argued that the case of these applicants is distinguished on the point that no selection at all had been conducted by the respondents in order to fill up the post of EDDA. It has not been shown by the learned counsel for the respondents that any selection process was initiated in order to fill up the post of EDDA and in the case of the petitioner of the writ petition the petitioners were replaced by the newly regularly selected persons, but in the present case without conducting the regular selection applicants have been relieved, but we disagree with the arguments of the learned counsel for the applicant that the case of the applicants is distinct from the case of the petitioner of writ petition filed before the Hon'ble High Court of Delhi. So far as regards the status of the petitioner of the writ petition is concerned there is no difference in the status of the applicants well as in the status of the petitioner and as the applicants had been working without any appointment on the post in the manner in which the petitioner of the writ petition were working on the post of EDDA without any appointment or regular selection and they were engaged and they were only Daily Wager and in both the cases no procedure at all was followed in order to make regular appointment on the post of EDDA.

Swamy

Under these circumstances the case of the applicants as well as petitioners of the writ petition are identical. The status of the applicants as well as petitioner was the same and it cannot be differentiated merely on the ground that for the post held by the petitioner regular selection was conducted and the petitioners also participated in the selection. The question before the Hon'ble High Court was that whether the posts of such employees is to be regularized and as there was no valid appointment order in favour of the applicants and they were not appointed in the regular capacity, hence their appointment was considered as illegal and the case of the applicants is also the same.

10. Learned counsel for the respondents cited a judgment of the Hon'ble Apex Court reported in (2006) 4 SCC 1 Secretary State of Karnataka and Ors. Vs. Uma Devi (3) and Ors. and the Hon'ble Apex Court held as under:-

"45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that

R.W.C.H.

a person who has temporarily or casually got employed should be directed to be continued permanently."

11. From perusal of the above it is evident that the Hon'ble Apex Court held that if certain employees continued for some time and in some cases for a considerable length of time then their employment cannot be regularized merely on the ground of length of service, the person who accepts an engagement either temporary or casual in nature, is aware of the nature of his employment. And he must accept employment with open eyes. The case of the applicants is also same and this judgment of Uma Devi's case has also been followed by the Hon'ble Apex Court in subsequent case reported in (2006) 7 SCC 488 Accounts Officer (A&I) A.P. SRTC Vs. P. Chandra Sekhara Rao and Ors. & (2006) 7 SCC 684 Surender Prasad Tiwari Vs. U. P. Rajya Krishi Utpadan Mandi Parishad and Ors. In these cases the petitioner continued in service for 14 years and it has been alleged on behalf of the petitioner that he is entitled for regularization for this reasons and in view of the judgment of the Hon'ble Apex Court held in the case of Uma Devi (Supra) it was decided that it is not permissible. The judgment was also followed in 2006 (8) Supreme To-day 920 Chief Commissioner of Income Tax, Bhopal & Ors. Vs. M/s Leena Jain & Ors. Hence it is definite view of the Hon'ble Apex Court that if the appointment is not made by following the proper procedure then the person concerned cannot be permitted to continue on the post due to this

SW Chay

reason that he is continuing on the post for a number of years. Moreover, it is also material that in the present case stay was granted in the favour of the applicant in the year 2006 and since then the case is continued to be adjourned on the one or the other ground, but in view of the judgments of the Hon'ble Apex Court the persons is not entitled for any protection, because he continued in service since 2006 in view of the stay order granted in favour of the applicant by the Tribunal.

12. One more judgment has also been cited by the learned counsel for the applicant reported in Supreme today 2003 (2) Supreme 810 Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan in this case the petitioner was appointed as lady Dr. Municipal Council, Ganganagar purely on temporary basis for a period of six months or till the candidate is selected by Rajasthan Medical Service Commissioner is available, whichever is earlier. And thereafter, the service of the applicant was extended from time to time. In the year 1988 services of the petitioner were terminated. Moreover, the point is also considered by the Hon'ble Apex Court of legitimate expectation, it will be material to reproduce the relevant para which is as under:-

"On the facts of the case delineated above, the principle of legitimate expectation has no application. It has not been shown as to how any act was done by the authorities which created an impression that the conditions attached in the original appointment order

Sunil Ray

was waived. Mere continuance does not imply such waiver. No legitimate expectation can be founded on such unfounded impressions. It was not even indicated as to who, if any, and with what authority created such impression. No waiver which would be against requisite compliances can countenanced."

13. Hence the applicants in the present case cannot be permitted only on the ground of legitimate expectation that he will be regularized after lapse of certain years. Because from the very date of the engagement the applicants were knowing that no appointment letter was issued in favour of the applicant nor any selection was conducted in order to fill up the post of EDDA and they were only engaged and hence their engagement can be terminated at any time without issuing any show cause notice.

14. It has been argued by the learned counsel for the applicant that no opportunity at all was provided to the applicants of being heard, if the services had illegally been terminated then the proper opportunity is to be provided to such person and applicants who have been continuing on the post for the last eight or nine years, were not provided any opportunity of hearing, a show cause was issued on 16th March, 2006 and even without waiting for a period of three days provided in the notice the relieving order was issued on 16th March, 2006 itself, it shows that no opportunity was provided and in pursuance of his arguments learned counsel for the applicant cited certain judgments:-

QWCP

- i. (1988) ATC 226 Surya Bhan Gupta Vs. Union of India and Ors.
- ii. C.A.T. Cuttack Bench reported in 2003 (3) 105 Shri Debendra Chandra Muduli Vs. Union of India and Ors.
- iii. Supreme Court judgment delivered in Civil Appeal No.562 of 2003 Rangammal Vs. Kuppuswami & Anr.
- iv. (1991) Supp (1) SCC 330 Sharawan Kumar Jha and Ors. Vs. State of Bihar and Ors.

15. Besides above, several other judgments of the different Benches of C.A.T. and Hon'ble Apex Court have been filed, we have considered the judgments cited by the applicants' Advocate and we are of the opinion that in the light of the judgment of the Hon'ble Apex Court delivered in the Uma Devi (Supra) no benefit can be given to these applicants, because the appointment of these applicants was not only illegal, but no appointment order was issued in favour of these applicants at all. The law laid down by the Hon'ble High Court of Delhi is fully applicable in the present case. Learned counsel for the applicant argued that in the G.D.S. (conduct & employment) rules the procedure has been provided that how the service of an employee can be terminated, under these circumstances he produced rule 8 of the G.D.S. conduct which is as under:-

“8. Termination of Employment

(1). The employment of a Sevak who has not already rendered more than three years' continuous employment from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the Sevak to the

Subdasy

Appointing Authority or by the Appointing Authority to the Sevak;

(2) The period of such notice shall be one month:

Provided that the employment of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his employment, or as the case may be, for the period by which such notice falls short of one month."

16. Hence in view of this rule the employment of a Sevak can be terminated at any time by a notice in writing given either by the Sevak to the Appointing Authority or by the Appointing Authority to the Sevak and the period of such notice shall be one month and learned counsel for the applicant argued that thus, the services of the applicant have not been terminated as per rules and no notice was given to the applicant and due to this reason the termination is illegal. And that no inquiry at all was conducted against the applicants. Considering the facts and circumstances of the case we are of the opinion that no inquiry at all was conducted in the case of the applicant, because the applicants were not relieved on their post on the ground that that they have committed any misconduct during the course of their employment. When we have decided above that no appointment letter was issued in favour of the applicants and they have not been appointed as EDDA, hence no such

QW E/Say

procedure is required to be followed. But rule 8 of the G.D.S. (conduct & employment) rules provides that the services of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance + Dearness Allowance of one month. It has been alleged by the applicants that the notice/show cause was issued on 16th March, 2006 and on the very same date the order of termination/relieving was passed against these applicants, but in the present case in view of proviso of rule 8 one month's salary can be paid afterwards. Although, since 2006 these applicants continued on the post on the strength of stay order granted by the Tribunal in favour of applicants and it can be said that these applicants are not entitled for adjusting the salary of one month because on the strength of stay order granted by this Tribunal these applicants continued in service, but now also one month's salary can be paid and in this connection order can be passed.

17. For the reasons mentioned above we are of the opinion that that no regular selection was conducted in order to provide employment to these applicants on the post of EDDA and no order was issued inviting application from the general public including the applicants in order to fill up the post of EDDA and as no selection was conducted in order to fill up these posts, hence no appointment letter was issued in favour of the

Swapan

applicants, the applicants were only engaged and they were only paid the salary as Daily Rated employee. Hence the service of the applicants cannot be regularized, because the engagement of the applicants was not in accordance with law and it was against the relevant provision, hence the applicants are not entitled for the relief claimed. O.A. lacks merits and liable to be dismissed.

18. O.A. along-with O.A. Nos. 480/2006 and 481/2006 are dismissed. Stay, if any, granted earlier is vacated forthwith. No order as to costs. Copy of this order be placed on the file of O.A. Nos. 480/2006 and 481/2006.