

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 691/96

PRESENT : Hon'ble Mr. D.V.R.S.G. Dattatreya, Judicial Member
Hon'ble Mr. B.P. Singh, Administrative Member..

Sri Puruswatam Santra

- v e r s u s -

1. Union of India,
Service through the Secretary,
Department of Post Services,
Ministry of Communication,
New Delhi-110 001.
2. The Chief Post Master General,
West Bengal Circle, Yogayog Bhawan,
Calcutta-700 012.
3. The Senior Superintendent of Post Offices,
Central Calcutta Division, Calcutta-700 007.
4. Senior Post Master,
Park Street Head Office,
Calcutta-700 016.
5. Mohammad Sakil,
Substitute of E.D.Agent, Park St.
6. Surajit Chakraborty,
Substitute of E.D. Agent, Park Street.

...Respondents.

...Private Respondents.

For the applicant : Ms. Uma Sanyal, counsel.
Ms. S. Banerjee, counsel.
For the respondents : Ms. B. Ray, counsel.

Heard on 19.7.2000

Order on 1-8-2000.

O R D E R

B.P. Singh, AM

Shri Puruswatam Santra has filed this O.A. regarding his non-absorption on the vacant post of Extra Departmental Agent or Gr. D post though he has been working as a substitute E.D.A./Daily rated Mazdoor since 1984. The applicant has prayed for the following reliefs:-

"8.

- (a) A mandate please may be given directing the respondent authorities to regularise the service of the applicant to the vacant post of E.D. Agent or Group 'D' category to which he is legally entitled.
- (b) An order directing the respondent authorities not to disengage the applicant from the post of substitute of E.D. Agent at Park Street Post Office to which he is performing his duties upto this date till regularisation of his service to the vacant post of E.D. Agent or Group-D category as per established rules and regulations and also the circular issued by the Post Master General."

2. The fact of the case is that the applicant was initially appointed as a substitute Extra Departmental Farash on 4.6.84 at Park Street Post Office under Senior Post Master, Park Street. He has been performing his duties as a substitute E.D.A. honestly, sincerely and devotionally. The applicant was on and from 19.11.85 ~~was~~ engaged as daily rated mazdoor in Gr.D where he worked upto 1.12.88. He was again engaged as substitute E.D.A. from 1.1.89 and has been working as such since then. The applicant has enclosed documents in support of the above at Annexures-A and A/1 to the O.A.

2.1. The applicant states that he was substitute E.D.A. w.e.f. 10.4.95 against the post held by Sri Baren Das who has been promoted to the Gr.'D' cadre and, therefore, the post was lying vacant. The applicant was due for absorption against the post of Sri Baren Das but he was not absorbed and another person Sri Mohammad Sakil, the Pvt. respondent No.5 was absorbed. The applicant made representations for his permanent absorption on the post of E.D.A or Gr.'D' as he has been working since 1984 and completed more than 3000 days in different capacities. ~~he has attached~~ ^{is attached} His last representation dated 6.3.96 ^{as} Annexure-B.

2.2. The applicant drew the attention to memo dated 13.11.87 issued by respondent No.2 in which one time exception to daily rated mazdoor and ~~irregular~~ substitute working prior to 7.5.85 was given. The applicant was entitled for absorption but illegally and arbitrarily it was not done. A copy of the circular dated 13.11.87 from respondent No.2 is enclosed as Annexure-C.

2.3. The applicant submits that since he had completed more than 180 days in a calendar year and total period being more than 3000 days he was entitled to be absorbed on regular basis as E.D.A. which was not being done by the respondents. The services of the applicant have been utilised by the respondents also as Daily Rated Mazdoor and Contingent paid staff as and when required in addition to a substitute E.D.A. In view of this fact the applicant has legitimate claim for permanent absorption either in a vacant post of Extra Departmental Agent or Gr.'D'. The applicant has also drawn our attention to the judgment dated 20.9.95 of this Tribunal in O.A. 539/95 in the case of Miss Jaya Lodh & Anr. Vs. Union of India and Ors. in which the Tribunal directed the respondents to take steps to absorb the applicant as Extra Departmental Stamp Vendor subject to rules. A copy of the decision is enclosed as Annexure-D. The case of the applicant was not dealt with in accordance with the decision of the Hon'ble Tribunal stated above and he was not being regularised. This action on the part of the respondents is violation of fundamental rights as enshrined in the Constitution. In spite of the repeated representations, directions of the higher authorities of the Deptt. and Hon'ble CAT's decision the applicant failed to receive any relief from the respondents. There is still a vacant post of E.D.A. and the applicant fulfilled all the requirements for regularisation. But in spite of that nothing has been done. The applicant has also filed supplementary affidavit by which he ^{intimated} ~~is entitled~~ that he has ^{been} ~~disengaged~~ from service w.e.f. 15.7.96 in spite of existence of vacancy ^{on} ~~and~~ the post of substitute E.D.A. and daily rated Mazdoor and he was thus deprived of his

legitimate claim of regularisation. Being aggrieved with the inaction on the part of the respondents, the applicant filed this O.A.

3. We have heard Ms. U. Sanyal Id. counsel leading Ms. S. Banerjee for the applicant and Ms. B. Ray, Id. counsel for the respondents. We have gone through the O.A. and reply to the O.A. We have also gone through the supplementary affidavit filed by the applicant.

4. The Id. counsel Ms. Sanyal has reiterated the facts and pleaded that the representations of the applicant for regularisation of service ~~on~~ on the post of E.D.A. or Gr. D even after having continuous service from the year 1984 with short artificial breaks have remained unreplied by the respondents which is illegal, arbitrary and malafide. The applicant fulfilled the conditions for regular absorption on the post of E.D.A./Gr.D. He has completed 3000 days of service and acquired right of regularisation of service to the vacant post of E.D.A. His non-regularisation of service is violation of Arts. 14 and 16 of the Constitution. The applicant is working as a substitute EDA till date and due to high handed action of the concerned authorities he has been deprived of his legitimate claim of regularisation of service to the vacant post of E.D.A or Gr.D category to which he is legally entitled. Some of the juniors to the applicant i.e. respondents Nos. 5 and 6 have already made regularised ignoring the claim of the applicant. The Id. counsel has further drawn our attention to the DGP&T letter dated 25.11.93 which provides that officiating arrangement of E.D.A. in Gr.D cadre should not exceed for 180 days and if it exceeds, it legitimises the claims of such Extra Departmental Substitutes for regularisation as E.D.A. The applicant has long uninterrupted services of much over 180 days and, therefore, he is entitled to be absorbed against the vacant post of E.D.A. The respondent authorities have not acted according to the rules and regulations and judicial findings, and discriminated the applicant vis-a-vis his juniors. Since the applicant fulfils the required condition for absorption on regular basis as he has worked for a much longer period i.e. 180 days as substitute E.D.A and discharged his duties to the satis-

faction of the authorities, ^{he} is entitled for absorption on regular basis.

There is full justification for his regularisation and therefore it should be done by allowing this O.A. and granting the reliefs prayed for.


5. The Id. counsel Ms. Ray for the respondents submitted that the main question involved in this case is whether the substitute to a an E.D. Agent who has worked for 180 days or more in a calendar year is entitled for absorption on regular basis or not. The Id. counsel submitted that this issue has been finally decided by the Hon'ble Apex Court in the order dated April 28, 2000 in Civil Appeal No. 3080/2000 arising out of Special Leave Petition (C) No. 12309/1997 (Union of India & Ors. Vs. Debika Guha and Ors.). This Civil Appeal arose against the order dated 11.10.96 in O.A. No. 1062/95 (Debika Guha and Ors. Vs. U.O.I & Ors.) of this Tribunal in which the official respondents preferred the above appeal before the Hon'ble Apex Court. The Hon'ble Apex Court has passed the following orders:-

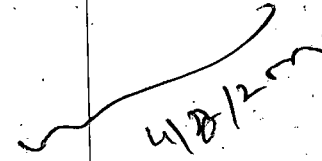
" The grievance before us in this appeal is in relation to an order passed by the Central Administrative Tribunal, Calcutta Bench holding that substitute Extra Departmental Agents of the Postal Department who have worked for 180 days or more in one calendar year continuously can claim to be regularised. The Tribunal gave a further direction that the appellants should determine on the basis of available records the period for which the respondents have worked continuously and if such period in any calendar year exceeds 180 days, neglecting short artificial breaks, should absorb them in future vacancies, provided they satisfy the eligibility conditions. When similar matters came up before this Court in Writ Petition No. 1624 of 1986 and connected matters, this Court held that the claim on behalf of substitutes ordinarily is not entertainable but made it clear that, however, if they have worked for long periods continuously, their cases could be appropriately considered by the department for absorption. When this Court has already decided that there cannot be a legal claim on the basis that they have worked for 180 days continuously, it may not be necessary for us to consider that aspect of the matter. Indeed, if it is shown that they have worked for

long periods continuously, it will be for the department to consider the same whether that was a proper case for absorption or not and pass appropriate orders. Thus, we think the whole approach of the Tribunal is incorrect in the light of the decision of this Court. Therefore, we set aside the order passed by the tribunal. However, it is open to the appellants to examine the case of the respondents, if they have worked for long periods, to absorb them, as the case may be. The appeal is allowed."

6. The above order of the Hon'ble Apex Court is very clear and final. We do not find any scope to adjudicate the matter. The court has clearly held that the claim on behalf of the substitutes is not entertainable and, therefore, there cannot be any legal claim on the post that they have worked for 180 days or more continuously. The decision of the Hon'ble Apex Court is binding onus and no new material has been placed before us by the parties at the time of hearing. So far as the claim of the applicant for regularisation against the Gr.D post is concerned, he is not entitled to any benefit on the basis of working as substitute E.D.A. Accordingly we dismiss the application directing the respondents to act in accordance with the order dated 28.4.2000 passed by the Hon'ble Apex Court as quoted above.

7. No order is passed as to cost.


(B.P. Singh) 04/08/2000


(D.V.R.S.G. Dattatreya)

a.k.c.