

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 790 of 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman

Hon'ble Mr. M.S. Mukherjee, Administrative Member

Babul Bhattacharjee, Disengaged Extra
Departmental Stamp Vendor, Park Street
Head Post Office, residing at Nischinda,
P.O. Ghoshpara, Bally, Dist. Howrah-27.

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Applicant

-Vs-

1. Union of India, through the Secretary to the Govt. of India, Ministry of Communication, Deptt. of Posts, New Delhi ;
2. The Chief Post Master General, West Bengal Circle, Yogayog Bhavan, Calcutta-12 ;
3. Sr. Superintendent of Post Offices, Central Calcutta Division, Calcutta-7 ;
4. The Sr. Post Master, Park Street Head post Office, Calcutta-16.

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Respondents

For applicant : Ms. U. Sanyal, counsel
Mr. M.K. Bandopadhyay, counsel

For respondents : Ms. B. Ray, counsel

Heard on : 23.6.1997 - Order on : 3.7.1997

O R D E R

A.K. Chatterjee, VC

The petitioner was engaged as an Extra-Departmental Stamp Vendor in Park Street Head Post Office on 7.5.90 as a nominee of one Smt. Archana Das, who was appointed as a Postman in the same Post Office on an adhoc basis. She having successfully completed theoretical and practical training was appointed to the Postman cadre temporarily by an order dt. 24.4.96 and the petitioner, who was continuing as nominee EDSV was dis-engaged on 11.4.96 till

which he had worked continuously ^{ever} since he was engaged with a few artificial breaks. The petitioner contends that by working more than 180 days in every year since 7.5.90 and about 2000 days in all, he has a legitimate claim for regularisation as EDSV, which ^{post has} is now fallen vacant but inspite of it, the respondents have taken steps to fill up the post from outsiders. He, therefore, prays for a direction upon the respondents to absorb him on a regular basis as EDSV in the said Post Office or in any equivalent post.

2. The respondents in their counter do not dispute that the petitioner worked as a substitute of Smt. Archana Das as EDSV since 7.5.90 but said that he had not worked for a period exceeding 90 days at a stretch and it was not correct that he had completed 2000 days of working continuously. According to the respondents, the departmental rules permit engagement and disengagement of a substitute by a regular incumbent but there is no provision for regularisation of such substitute.

3. An interim order was made on 3.7.96 that any appointment to the post of Extra-Departmental Stamp Vendor at Park Street Head P.O. shall abide by the result of this case on condition that the appointee was impleaded as a party respondent.

4. We have heard the 1d. Counsel for the parties and perused the records before us.

5. The petitioner does not rely on any specific departmental rule regarding regularisation of a substitute but he has tried to draw support from the decision of the Supreme Court in Jagrit Mazdoor Union case (1990) Vol.12 ATC 769 and also upon the decision of this Bench in OA 539/95, besides a letter of DG (Posts) dated 25.11.93. On the other hand, the respondents tried to resist the case on the basis of another decision of Supreme Court in SCSLJ 1996(1) 293 and a decision of this Bench in OA 850/94. They have also cited the decision of the Supreme Court in SCSLJ 1994(2) 369.

6.1 Now to take up the last decision cited, it is found ^{from} ~~on~~ record that according to the respondents, it was held that a casual labour with temporary status does not acquire any right to ^{be} regularised but this decision appears to be hardly relevant because it has been pointed out in OA 850/94 on which also the respondents rely, that the status of ~~an~~ ED Substitute is quite different from that of a casual labour.

7.1 The petitioner has been inspired by the decision in Jagrit Mazdoor Union case (supra), in which their Lordships were told, ^{by the 1st court for the govt.} that so far as substitutes were concerned, orders were issued to consider their claim against Group-D vacancy. It was observed by their Lordships that ordinarily the claim of substitute was not entertainable but the case of substitute, who have worked for long period should be appropriately considered by the department. Thus the basic point decided was that the claim of substitute, who have worked for long period should be appropriately considered by the department. The respondents have stated that this direction does not say anything more than consideration of the case of substitute, who have worked for long periods. Ofcourse it does not say anything more than consideration but the respondents in the present case even do not say that the case of the petitioner was ever considered at all. Since a court does not pass or give any redundant order or direction, it necessarily follows ^{that} with a direction for consideration ~~means consideration~~ on a preferential basis because considerations as an outsider subject to all the prevailing rules are always supposed to be given and ^{can} even be demanded without any order of the court at all. This disposes of the argument of the respondents that the petitioner has no case as the extant rules do not provide for regularisation of substitute.

8. Regarding the decision of this Bench in O.A.850/94 disposed of on 17.7.96 on which the respondents heavily rely, it may be stated that the question whether the claim of substitute for regularisation, or for that matter for consideration for regularisation, depends upon the length of service put in by him as a substitute and thus it depends on the facts of a particular case and, therefore, even if a case is allowed or rejected, it cannot be regarded as a binding precedent in all subsequent applications filed by ^{any} other substitutes. If there is any general observation in the said OA that a substitute cannot have any sort of claim, we can point out that it is directly in conflict with the decision of the Supreme Court in Jagrit Mazdoor Union case (supra) to which attention of the ^{“Bench which”} Tribunal decided in the said OA was not invited. In such circumstances, this decision can only be regarded to be of limited application to the facts of that particular case but cannot be held to be a general proposition of ~~as~~ universal application.

9. The petitioner has also pointed out a letter of the DG(Posts) dt.25.11.93, which states, inter alia that the Divisional Heads should ensure that ^{Save} ~~in several~~ exceptional circumstances, officiating arrangements of ED Agents in Group-D post/Postman cadre do not continue for periods exceeding 180 days as it would legitimise their claim for regularisation creating administrative problems. The petitioner thus argues that even according to the DG(Post), working for 180 days or more entitles the substitute to claim regularisation. The respondents have stated that it was just a letter and neither a circular nor a rule and cannot, therefore, be of any ^{help} to the petitioner. We might appreciate some force in this contention if only the letter was opposed to any ~~expressed~~ rule or circular but it seems that it is an instruction on a matter on which the rules are silent. Further there is no explanation why this letter, ^{particular} for atleast the ^{operation} regarding the statement about

about legitimisation of claim for regularisation was not withdrawn if it was uncalled for or opposed to the law on the subject. In this connection, however, the respondents have pointed out that the effect of this letter was also considered in O.A.850/94 and it was held that it does not give rise to any right for regularisation. No doubt the letter does not give rise to any such right and to this extent, the import of this letter has been correctly stated in the said O.A.; ^{but} the whole point is that such a right exists quite apart from this letter and the departmental letter is only an acknowledgement of the existence of that right.

10. The respondents have cited the decision of the Supreme Court in Sub-Divisional Inspector of Posts, Vaikam & Ors., 1996(1) SCSLJ 293. In that case their Lordships held that the Postal Department is not an industry and struck down certain orders of the Tribunal, which quashed the order of termination and directed the authorities to terminate in accordance with the provision of the Industrial Disputes Act. By the same judgment, their Lordships had dismissed two other similar cases being CA.3385-86 of 1996 as their Lordships declined to interfere on the ground that the respondent ^{was} working since 1983. Therefore, there is no doubt that the long periods during which the respondents in these two similar cases had worked did weigh with their Lordships, ^{which} unmistakably shows that all substitutes cannot be bracketed together irrespective of the period of their engagement. In this view of the matter, this decision seems to be quite in harmony ^{with} in the decision taken in Jagrit Mazdoor Union's case (supra).

11. On fact, it is found that the respondents admit that the petitioner began working on 7.5.90 but did not work for more than 90 days at a stretch and they also dispute that the petitioner has worked for a total of 2000 days. However, even though the respondents dispute the total number of days worked as stated in the