

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

NO. O.A. 135/1996

Date of Decision: 08.10.2004

PRESENT: HON'BLE MR. SARWESHWAR JHA, MEMBER (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Sudip Mukherjee, Son of Late
Sri B.N. Mukherjee, aged about 38 years,
Worked for gain as Substitute
Extra Departmental Mailman,
Calcutta Airport Sorting Division,
Office of the Senior Superintendent,
Kolkata-28; Residing
at Vill. Kadamtala, P.O. Natagarh
Dist. 24-Pgs (N).

.... Applicant

Versus

1. Union of India service
through the Secretary, Ministry
of Communication, Deptt. of
Posts, New Delhi
2. The Chief Postmaster General,
W.B. Circle, Calcutta-12
3. The Senior Superintendent,
Calcutta Airport Sorting Division
Calcutta-28
4. The Head Records Officer,
Calcutta Airport Sorting Division,
Calcutta-28

.... Respondents

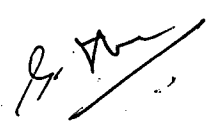
Present for Applicant : Mr. S.K. Dutta

Present for Respondents: Mr. S.P. Kar

ORDER

PER SARWESHWAR JHA, A.M. :

This OA has been filed against non-regularisation of appointment of the applicant as ED Mailman and also against non-consideration of his appointment/engagement as a Substitute ED Mailman despite his having fulfilled the terms of the order dated the 13th November, 1987. The applicant has also alleged that his representations as submitted in this regard dated 2.8.1988, 2.3.1990, 20.2.1991 and 27.10.1995 have not been considered by the respondents.



He has accordingly prayed that the respondents be directed to regularise his services as ED Mailman in terms of the said order and also to engage him as a Substitute till regular appointment to the post of ED Mailman is made. He has also prayed that the respondents be directed to consider his representations and to dispose them of in proper perspective.

2. The applicant was initially engaged as a Substitute ED Mailman at Calcutta Airport Sorting Division under the Department of Posts w.e.f. 08.04-1981 and he worked as such upto 31.07.1981 on a consolidated remuneration of Rs. 130/- per month plus usual additional allowance. Thereafter, he was disengaged, but further engaged as ED Mailman w.e.f. 25.06.1982 and continued to work till 29.05.1983, and then again from 08.08.1983 to 18.01.1984. It is thus observed that the applicant has served the respondents in different spells. He has submitted representations in this regard, but the same have not been given due consideration by the respondents, as alleged. He has claimed that he is entitled to be regularized in the said post. Clarifying his claim, he has submitted that he had been engaged as a Substitute prior to 7.5.1985 and also dis-engaged prior to the said date and as such he is entitled to get the benefit of the order dated 13.11.1987 (Annexure 'C').

3. From what has been submitted by the respondents in their reply, it is observed that the applicant was a nominee of Md. Kamrul Haque, ED Mailman, Calcutta A.P. Stg. Division from 08.04.1981 to 31.07.1981. He was nominated as a substituted ED Mailman in place of Md. Kamrul Haque as per EDA's service conditions. According to them, the applicant has no locus standi to file the

instant Application before the Tribunal, as he was engaged as an ED Substitute by Md. Kamrul Haque while he was himself appointed on ad-hoc basis as a Group-D staff. Under the rules, an ED official is to provide a substitute at his own risk and responsibility while he would be on leave or on promotion on ad-hoc basis in the Department.

4. It has been further submitted by the respondents that under the relevant Rules, the Department cannot appoint an ED staff without getting the candidates duly sponsored by the Employment Exchange. The services of a nominee cease with the joining of the regular ED staff in the said post. Accordingly, the applicant is not entitled to regularisation in the post of ED Mailman unless and until he is sponsored by the Employment Exchange. Incidentally, he was also not in service on the date of issue of the order dated 13.11.1987 under which the applicant is claiming regularisation of his services. It has been further submitted that selection of ED officials is under process and the same will be done as per the relevant departmental rules/instructions on the subject.

5. With reference to what has been submitted by the applicant in paragraph 4 (k), the respondents have submitted that there was a departmental order regarding regularization in the post of ED as a one time measure only in respect of those who had worked as ED substitute or partly as ED Substitute or partly as a daily rated Mazdoor for pretty long time, i.e., not less than 240 days in a year from a date prior to 07.05.1985 and continued to work on the date of issue of the W.B. Circle letter No. SFB/Z-14/87/ED dated 13.11.1987. The applicant,

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(4)

who has not rendered the requisite number of days of service as per the Order dated 13.11.1987, and also as engagement of ED Agent is to be done through Employment Exchange only, the applicant is not eligible for such an appointment in the light of what has been submitted above. In this regard, we have referred to the detailed provisions of the order dated 13.11.1987 and we find that the concession which had been allowed to such daily rated/casual workers prior to 7.5.1985, the same dispensation is not available to this category of workers after the said date. It will be only through the Employment Exchange that such workers shall be considered for appointment as EDAs after the said date. Appointment of EDAs even on adhoc or provisional basis after the said date is to be made only through the Employment Exchange.

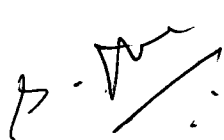
6. On perusal of the facts of the case, it is observed that the applicant, according to his own submissions/admission, rendered service as a Substitute ED Mailman from 08.04.1981 to 31.07.1981, i.e. for about 114 days in the year 1981 and from 25.6.1982 to 25.5.1983, i.e., for about 11 months in two calendar years and from 08.08.83 to 18.1.1984, i.e., for about 150 days, again in two calendar years, i.e., 1983 and 1984. It is possible that if his services as claimed to have been rendered in the year 1983 in two spells are put together, it might meet the requisite requirement of 240 days of service in a calendar year, but the fact remains that the respondents have confirmed that the applicant has rendered only 114 days of service in the year 1981. It is thus observed that the applicant was not in the engagement of the respondents as on the crucial date, i.e. 13.11.1987.

B. M.

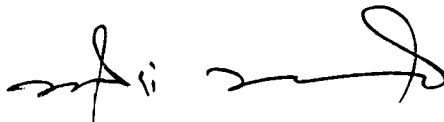
regarding regularisation of the ED Agents was issued by the Office of the Post Master General, West Bengal Circle, Calcutta. We also do not find any provision regarding relaxation of the ED Agent being employed other than through the Employment Exchange, particularly after 7.5.1985. Following, thus, the instructions as contained in the said letter of the respondents, we do not find that the applicant has a proper claim to being declared regular as an ED Mailman.

7. There is, however, a reference to the fact that the respondents are considering selection of ED officials and the same will be done as per the departmental rules and instructions issued by the competent authority from time to time. The above submission has been made by the respondents with reference to what has been submitted by the applicant in paragraph 4 (g) of his OA, in which he has claimed, that the respondents had issued a Memo dated 25.8.1995 inviting applications for consideration of appointment to the post of ED Mailman both from the Substitute ED Mailmen, who had worked previously and also had asked the Employment Exchange for sponsoring names for the said positions and that he submitted a representation in the prescribed form on 28.8.1995 enclosing therewith the requisite documents as have been asked for. The said representation of the applicant is yet to be disposed of by the respondents.

8. The respondents will also need to see whether the applicant has rendered 240 days of service as claimed by him in the year 1983 and whether for that reason he has become eligible for regularisation. In any case, he has submitted representations to the respondents, which have not been disposed of by them so far.



9. In consideration of the above, the OA is, therefore, disposed of with a direction to the respondents to consider the representations of the applicant as claimed to have been submitted by him to them and as is/are still pending consideration/reply and to dispose them of within a period of three months from the date of receipt of a copy of this order and communicate the same to the applicant through a reasoned and speaking order within the said period. No costs.



(Mukesh Kumar Gupta)
Member (J)



(Sarveshwar Jha)
Member (A)

/pkr/