

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....
Date of Order : 28.05.2003

O.A. NO. 229/2002

Ogar Mal Bhil S/o Shri Bhimaji Bhil, aged about 31 years, by caste Bhil, R/o Village Nekhela (Richhed), Tehsil Kumalgarh, District Rajsamand. [Applicant was working as EDSPM in the respondent department].

.....Applicant.

versus

1. Union of India through the Secretary to the Government of India. Ministry of Posts, Dak Tar Bhawan, Sansad Marg, New Delhi.
2. The Superintendent of Post Offices, Udaipur Division, Udaipur.
3. The Sub Divisional Inspector (Post), Devgarh, District Udaipur.

.....Respondents.

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CORAM

Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

Hon'ble Mr. G. C. Srivastava, Administrative Member

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Mr. Kuldeep Mathur, counsel for the applicant.

Mr. Vineet Mathur, counsel for the respondents.

Q.M.

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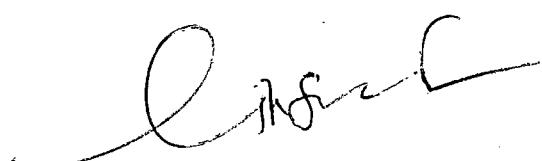
ORDER

PER MR. JUSTICE G.L. GUPTA :

The challenge in this O.A. is to the termination of the services of the applicant from the post of Extra Departmental Sub Post Master on 16.8.2002.

2. It is averred that the applicant was appointed as Extra Departmental Sub Post Master Rinchhed on 8.2.1999 as he was eligible to be appointed under the Rules of 1964 and he had received charge from Shri Inder Mal Bhil, earlier incumbent. It is further stated that the applicant performed his duties to the entire satisfaction of the authorities yet, the respondents have terminated the services of the applicant without following the procedure provided in the rules of 1964. An additional affidavit has been filed stating that the name of the applicant was forwarded by the Employment Exchange and that in the year 1997 also, he was given appointment but just after three days, he was asked to handover charge to one Shri Rajesh Kumar Tak. It is further stated in the affidavit that Shri Rajesh Kumar Tak, resigned in the year 1998 and the department gave appointment to Shri Inder Mal Bhil but after some time Shri Inder Mal Bhil also submitted his resignation, and hence, the applicant was given appointment.

3. In the counter, the respondents' case is that the Inspector, Post Offices, Deogarh, was directed to get the work from a temporary candidate till further appointment was made after the resignation of Shri Rajesh Kumar Tak. It is stated that Shri Inder Mal Bhil was given temporary charge but, he went on leave and for the leave period, the applicant was given the charge, and this stop-gap-arrangement continued till 17.8.2002. It is stated that the Rules of 1964 are not applicable to the case of the applicant as his appointment was not made as per rules and he was only a



'substitute' and was given appointment as stop gap arrangement.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. It is admitted position of the parties that the applicant had taken charge of the post of Extra Departmental Sub Post Master Rinchhed on 8.2.1999 and he continued on the post till 17.8.2002 when he was directed vide letter Annex. A/l to relinquish the charge of the office of Extra Departmental Sub Post Master, Rinchhed. It is further not in dispute that the work of the applicant during the period was satisfactory. Admittedly, the applicant had worked continuously on the post of Extra Departmental Sub Post Master for more than three years.

6. The contention of the learned counsel for the respondents was that the applicant was not given appointment order in writing and as he had worked as a substitute, he does not have a right to continue on the post.

7. It may be that no appointment order was issued in favour of the applicant when he was asked to take charge on 8.2.1999 but, that does not render the appointment of the applicant de hors the Rules.

7.1 A reading of the additional affidavit and averments made in the reply indicate that Shri Subhash Chandra Jain, was Extra Departmental Sub Post Master, Rinchhed, till 13.12.1997 and post fell vacant on his retirement. In order to fill-up the vacancy, the Employment Exchange was asked to send the names of the candidates. The Employment Exchange forwarded the names of eight candidates including the names of the applicant, Shri Rajesh Kumar

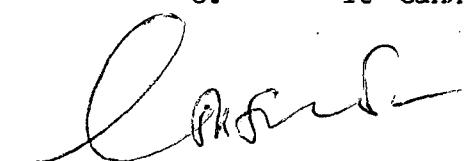


Tak and Shri Inder Mal Bhil. The authorities appointed the applicant on the post on 13.12.1997 as according to the applicant, his name was placed at No. 1 in the merit list. However, on objection raised by Shri Rajesh Kumar Tak, the appointment of the applicant was cancelled and the charge was directed to be handed over to Shri Rajesh Kumar Tak on 16.12.1997. The applicant handed over the charge. Shri Tak continued on the post till November 1998 when he submitted his resignation. After the post fell vacant, the department appointed Shri Inder Mal Bhil, w.e.f. 26.11.1998. Shri Inder Mal continued on the post for some time but, proceeded on leave and ultimately, submitted his resignation. Thereafter, the applicant was asked to take charge of the post.

7.2. These facts, which have not been controverted, clearly indicate that applicant's name was forwarded by the Employment Exchange and he was available on the select list. It is evident that after Shri Rajesh Kumar Tak submitted his resignation the respondents gave appointment to Shri Indermal and when Shri Inder Mal submitted his resignation, the respondents gave appointment to the applicant. The appointment in the circumstances cannot be said to be not in accordance with the rules. The respondents had treated the select list alive and as and when the vacancy arose, they gave appointment to the incumbents.

7.3. It is true that appointment order ought to have been issued when the applicant was asked to take-over the charge of the office of Extra Departmental Sub Post Master but, if no orders were issued, it was not because of fault on the part of the applicant. It was on account of the lapse on the part of the respondents that the appointment order was not issued.

8. It cannot be said to be a case of appointment of the

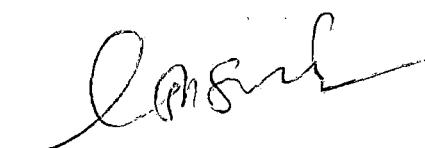


applicant as a 'substitute'. The appointment of a 'substitute' is made by the regular appointee whenever he proceeds on leave. It is not the case of the respondents that Shri Inder Mal, while proceeding on leave, had given his choice for appointment of the applicant as his 'substitute' and the respondents had approved his appointment as 'substitute'. No document whatsoever, showing the request of Shri Inder Mal, to give appointment to the applicant as his 'substitute', has been placed on record.

8.1 As a matter of fact, the reply in this regard, is vague. It is not stated in clear terms that the applicant was appointed as a 'substitute' by Shri Inder Mal while proceeding on leave. In the reply, it is stated at one place, that the applicant was a 'substitute' whereas, at other places, it is stated that he was appointed as stop-gap-arrangement.

9. How can it be said that applicant's appointment was as a stop-gap-arrangement when he was a duly selected person and he was allowed to work for more than three years. Simply because no appointment order was issued to the applicant, it cannot be accepted that the applicant's appointment was as 'substitute' or as stop-gap-arrangement.

10. Rule 6 of the Post and Telegraph Extra Departmental (Conduct and Service) Rules, 1964, provides that the services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the Appointing Authority or by the Appointing Authority to the employee. The period of such notice shall be one month.

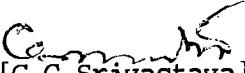


10.1. It is admitted position that the applicant had rendered more than three years continuous service. Therefore, the services of the applicant could not be terminated even under the provisions of Rule 6. As a matter of fact, by rendering more than three years continuous service, the applicant had attained higher status than that of an employee whose services could be terminated under Rule 6. He could be removed from service by following the procedure under Rule 7. It is relevant to point-out that it is not the case for the respondents that the posts on which the applicant was working has been abolished.

11. There is no substance in the contention of the learned counsel for the respondents that the Rules of 1964 are not applicable to the case of the applicant. Rule 2 of the Rules of 1964 defines 'employee'. The 'employee' means, a person employed as a Extra Departmental Agent. Extra Departmental Sub Post Master is also the Extra Departmental Agent under clause (b) of Rule 2. When admittedly, the applicant has worked as Extra Departmental Sub Post Master, how can it be said that the Rules of 1964 do not apply to his case. As already stated, on the mere ground that no appointment letter was issued, the respondents cannot succeed in contending that the rules of 1964 do not apply to his case.

12. For the reasons stated above, it is held that the applicant had completed more than three years service and his services could not be terminated by way of order Annexure A/1. The order, being illegal, is not sustainable in law.

13. Consequently, the O.A. is allowed. The Order Annex.A/1 is hereby quashed. The applicant shall be deemed to be continuing in service. He shall get all consequential benefits. The applicant shall also get cost Rs. 1,000/- from the respondents.


[G.C. Srivastava]
Administrative Member


[G.L. Gupta]
Vice Chairman

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Part II and III destroyed
in my presence on 13.2.09
under the supervision of
section officer (u) as per
order dated 5.2.09

W.C.O.
Section Officer (Record)

By copy with Cost bill
2/6