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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH,
JODHPUR**

O.A.NO.172/2004

May 8, 2007

**CORAM : HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR. TARSEM LAL, MEMBER (A)**

Sohan Singh S/o Shri Jugat Singh, aged 30 years, R/o Gram and Post Chandrakh via Ossian Official Address GDS BPM Chandrakh via Ossian.

Applicant

BY : Mr.Kamal Dave, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.
3. Sub Divisional Inspector, Post Offices, North Sub Division, Jodhpur.

By : Mr.M.Godara, Advocate for Mr.Vinit Mathur, Advocate.

.... Respondents

ORDER (oral)

KULDIP SINGH, VC

The applicant is aggrieved by order dated 24.6.2004 (Annexure A-1) by which the respondents have issued notice inviting applications for the post of Gram Dak Sewak, Chandrakh under Ossian, on a monthly emoluments of Rs.1280-35-1980 plus dearness allowance and Annexure A-2, dated 28.06.2004 by which he has been informed that his engagement on the post of GDS, Chandrakh via Ossian, is purely on temporary basis etc.

2. The applicant submits that process of filling up the post of GDS BPM at Chandrakh was initiated vide order dated 13.6.2002. As per communication dated 13.6.2002, preference was to be given to SC/ST and OBC and in case of non availability of a person from reserved category, post could be filled by general category candidate (Annexure A-3). Applicant applied against the above notice and was

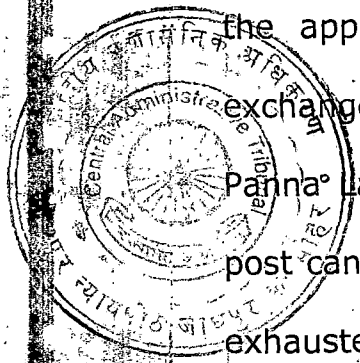


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selected. He was offered appointment vide order dated 18.2.2003 on provisional basis. It mentions that his appointment is provisional till the disciplinary proceedings against Shri Panna Lal, regular holder of the post are finally disposed off and he has exhausted all channels of departmental and judicial appeals and petition etc. (Annexure A-4).

3. However, the department has now issued notification, Annexure A-1, inviting applications for filling up the post held by the applicant. The post is to be filled up again on provisional basis. The applicant submitted a representation to the respondents on 28.6.2004 to wait for finalization of departmental proceedings against the regular incumbent of the post and till then the applicant may be continued. However, this was rejected on 1.7.2002 (Annexure A-2) on the ground that the applicant has himself given in writing that he accepts that his appointment is temporary and he can be removed without serving any notice. His grievance is that since he is already working on provisional / temporary basis and as such there is no ground with the respondents to start fresh process of selection to appoint another person on provisional / temporary basis and he is entitled to continue till the proceedings against regular incumbent are finalized or the post is filled up on regular basis.

4. The respondents have filed a reply. They submit that applicant was engaged on 18.2.2003 as a stop gap arrangement purely on temporary and provisional basis without adopting the due formalities of the selection procedure i.e notifying the post for inviting the application from the eligible candidates, through employment exchange as well as from open market. Till proceedings against Shri Panna Lal are finalized, regular and permanent selection on the said post cannot be made or until the departmental remedies available are exhausted by Shri Panna Lal or the limitation period is expired. Thus, it has become necessary for the department to disengage or not to allow



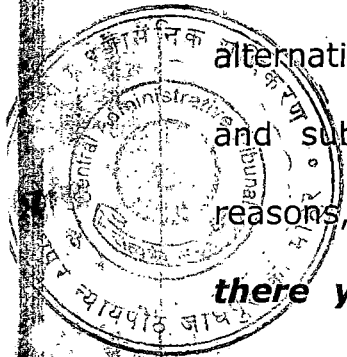
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the applicant on the irregular engagement for anymore longer period. Thus, for provisional appointment through regular selection, the vacancy has been notified vide Annexure A-1. The applicant has himself declared that he will not claim regularization. The post of GDSBPM of Chandrakh was declared reserved for SC category as per the GDS Rules, 2001 and the representation to the reserved categories are being given as per the decision of apex court and as per GDS rules on the subject.

5. We have heard the learned counsel for the parties and gone through the pleadings.

6. We find that as per the instructions contained in Postal Gramin Dak Sevak (Conduct & Employment) Rules, 2001, as issued by the D.G., P&T vide letter No.43-4/77-Pen., dated 18th May, 1979 and Circular No.19-34/99-ED & Trg., dated the 30th December, 1999, as published on page 100-101 of Swamy's Postal Gramin Dak Sevak, issue 2004, in cases where an appointment is made to fill the vacancy caused by the dismissal/removal of an ED Agent and the dismissed/removed employee has not exhausted all channels of appeal, the appointment should only be provisional. It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment. However, in para 2, it is provided that efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in **not less than there years' continuous** approved service. In such cases, their names should be included in the waiting list of ED Agents discharged from service. In this case it is undisputed that regular incumbent is



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undergoing disciplinary proceedings and the respondents themselves are not sure as to when such proceedings will come to an end. To meet with such eventualities the instructions provide for engagement of incumbents on provisional basis. However, even such temporary incumbents have been conferred with certain benefit including that efforts are to be made to give alternative employment to them if they had completed three years service.

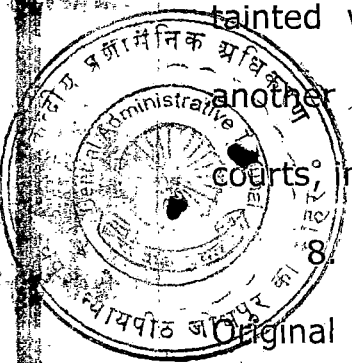
7. In this case, the applicant was given appointment as GDS vide order dated 18.2.2003 on temporary basis and in case he completes three years service he would become entitled to benefits in terms of the policy decision taken by the department itself. The order dated 13.6.2002 (Annexure A-3) by which the permission was granted for appointment of GDS on temporary basis indicates that the applications were to be called for making appointment. The SC/ST and OBC categories were to be given preference and if candidates from such category were not available, then even general category candidate could be appointed. The applicant applied in response to such notice and was selected. The appointment order issued by the respondents in his favour, Annexure A-4, as GDS on temporary basis clearly shows that the authorities had shown their intention in clear terms that the provisional appointment is tenable till the disciplinary proceedings against regular incumbent are finally disposed of and he has exhausted all channels of departmental and judicial appeals and petition etc. He is to be governed under the Extra-Departmental Agents (Conduct and Appeal) Rules, 1964 and all other rules and orders applicable to EDAs. It is the instructions / rules framed by the respondents themselves that provisional appointment is tenable till the disciplinary proceedings against regular incumbent are finalized etc. In this case it is admitted that till date the proceedings against regular incumbent have not been finalized. Thus, we see no reason as to why


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the respondents are bent upon in making again a provisional appointment with a view to replace the applicant who is already working on provisional basis. To us, it appears that there is an effort on the part of the respondents to dis-entitle the applicant benefits to which he would be entitled if he completes three years of service. This cannot be allowed by a court of law, that too without any rhyme or reason. In the reply there are vague assertions on the part of the respondents that the appointment of applicant is irregular. Not a single specific irregularity has been pointed out by the respondents. Nobody has stopped them from making regular selection to the post. If an eventuality arises that regular holder of the post is to be reinstated, he can be reinstated at some other place. It is provided in the instructions itself. They cannot be allowed to thwart the benefits ^{which may accrue} available to the applicant once he completes three years of service. The attempt made by the respondents to justify their action on the ground that shortfall of SC/ST is to be full filled does not appeal to reasons. If they proceed to make regular selection, one can understand their logic. But while making an officiating arrangement, such plea prima facie appear to be tainted with unfairness. Replacement of an officiating hand with another officiating hand is also against the law laid down by various courts, including Hon'ble Supreme Court of India.

8. In view of the above, we find that there is merit in the Original Application. It is allowed. Notice, Annexure A-1, dated 24.6.2004 is quashed and set aside. Consequences to follow. No costs.


Tarsem Lal
(TARSEM LAL)
MEMBER (ADM.)


(KULDIP SINGH)
VICE CHAIRMAN

Part II and III destroyed
in my presence on 03-6-14
under the supervision of
section officer () as per
order dated 26-7-3-14

Section officer (Record)

R/c
Part
(for Kameel Drive)

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