

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 562/97

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

Uttam Kumar Mitra

- v e r s u s -

Union of India and Ors.

For the applicant : Ms. U. Sanyal, counsel.  
Ms. S. Banerjee, counsel.

For the respondents : Mr. B.K. Chatterjee, counsel.

Heard on 19.7.2000

Order on 4.8.2000

O R D E R

B.P. Singh, AM

Sri Uttam Kr. Mitra substitute E.D.A. has filed this O.A. against his non-absorption on regular basis on the vacant post of E.D.A. and inspite of the fact that he completed more than 2500 days of service and 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 his E.D. AGent to which he is legally entitled withdrawing and/or cancelling the penalty made portion of the letter dated 26.3.1997/15.4.1997 Annexure-B herein to the effect.
- (b) An order directing the respondent authorities not to disengage the applicant from the post of Daily rated Mazdor at Tiretta Bazar Post Office to which he is performing his duties upto this date, till retgularisation of his service to the vacant post of E.D. Agent as per established rules and regulations."

2. The fact of the case is that the applicant was initially appointed as a substitute E.D. Stamp vendor w.e.f. 1.7.89 under Respondent No.4 at Tiretta Bazar Post Office as per Annexure-A. The applicant worked as such upto 15.4.97. W.e.f. 16.4.97 the post fell vacant on regular basis and the applicant has been working on the same post as daily rated mazdoor till date to the utmost satisfaction of his superiors vide Annexure -D. The applicant states that as a substitute he completed more than 2500 days of service with short artificial breaks and continued in the same capacity upto 15.4.97 and thereafter w.e.f. 16.4.97 he has worked as daily rated mazdoor and has been working as such till date. In support of this he has enclosed the charge report as Annexure-C. The applicant made repeated representations for his permanent absorption on the vacant post of E.D.A. on the ground that he has long service in the department since 1989. The applicant made further representation for permanent absorption a copy of which is enclosed at Annexure-D. The applicant also drew our attention to DG of Postal ~~Services~~ letter dated 25.11.93 which provides that if a substitute is allowed to continue for period exceeding 180 days, as a matter of rule this continued arrangement will legitimise the claim of the substitute for regularisation of his service as E.D. Agent. On the basis of this communication of the DG Postal ~~service~~ the applicant was entitled to be absorbed against the vacant post of E.D.A. due to his uninterrupted long <sup>years of service</sup> in the capacity of substitute E.D.A. Due his long years of service and experience the applicant is entitled for regular absorption against the vacant post. The applicant further submits that when the post on which he was working as a substitute fell vacant on regular basis the respondent authorities directed that no substitute E.D.A. should be allowed to work on the post and the clear vacancy should be <sup>managed</sup> ~~maintained~~ by the existing staff of the concerned post offices till further arrangement is made. This action on the part of the respondent authorities was clear-cut denial of natural justice and abuse of due process of law. The claim was overlooked by the respondents with malafide intention. The applicant was entitled for permanent absorption against the vacant post due to his long continuous service as substitute on the post. He was fully covered by the decision

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worked for a total period of 495 days also with short artificial breaks of a couple of days or so. In such circumstances, the instant application has been filed for appropriate relief.

2. In the reply, the respondents contend that the applicants were mere Substitutes of Sri Subhendu Sahu Roy and Sri Ram-  
1500 Das and as per records available in the department, they did not work for the period alleged by them, but they have annexed to the reply a statement indicating the number of days put in by the applicants.

3. On hearing the ld. Counsel for the parties and on perusal of the application, the reply and the Annexures thereto, there seems to be no controversy that Sri Subhendu and Rajiben have been selected for appointment to the cadre of Group 'D' non-test category on the basis of seniority by the Departmental Promotion Committee, as revealed by the Annexure A/3 to the application. Now in such a situation, two posts of Extra Departmental Stamp Vendor at Mott Lane Post Office had fallen vacant and even though Substitutes ordinarily cannot claim to an appointment or regularisation, still there may be cases, where by virtue of long services rendered by them, their claim is legitimised for regularisation as E.D. Agents. Relevant in this connection are the judgment of the Hon'ble Supreme Court in Jagrit Mardoor Union v. Mahanagar Telephone Nigam Ltd. and Writ Petition No.1624 of 1986 and the letter of the D.G., Posts dated 23.11.93. Even though the respondents have stated in the reply that no record was available in their office regarding engagement of applicant No.1 since 1987, as alleged by her, still according to the statement annexed to the reply, she has worked much more than 180 days per year at least since 1.9.88, of course with short breaks of a couple of days intervening. In the case of applicant No.2 also, even according