

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 583 of 2006

This the 06 day of September, 2012

Hon'ble Mr. Justice Alok K Singh, Member-J

Hon'ble Mr. S.P. Singh, Member-A

Vinod Kumar Singh, aged about 27 years, s/o late Raja Singh,
Badi Gaibi, FB 84 Avas Vikas Colony, District Varanasi

.....Applicant

By Advocate : Sri A.P. Singh

Versus.

1. Union of India through Secretary, Ministry of Communication, Department, New Delhi.
2. Sr. Superintendent of Post offices, District Pratapgarh.
3. Sub-Divisional Inspector, Post Offices, Central Division, Pratapgarh.

.....Respondents.

By Advocate : Sri D.S. Tiwari

O R D E R (Oral)

By Justice Alok K Singh, Member-J

Heard and perused the material on record.

2. This O.A. has been filed for the following relief(s):
 - (a) *to issue/pass an order or direction setting aside the impugned order directing the respondent to reengage the applicant to the post of GDS MP Kadipur on which he was appointed vide order dated 21.9.2004 and permit him to continue till the regularly selected candidate joins and also restrained them to engage any other person to the post in question.*
 - (b) *issue/pass any other or direction which this Hon'ble Tribunal deem fit and present circumstances of the case.*
 - (c) *allow this application with costs."*
3. After considering the arguments which were placed initially following interim order was passed on 2.1.2007.

"Heard counsel for the applicant Sri A.P. Singh and Sri D.S. Tiwari counsel for respondents. Sri A.P. Singh counsel for the applicant submits that Sri Vinod Kumar applicant in

AK

this case was appointed on the post of GDS BPM, Kadipur, which fell vacant as the regular incumbent on the post Sri Brijesh Kumar was appointed on the post of GDS BPM, Kadipur, The applicant completed nearly 1 ½ years of service on the aforesaid post. His grievance is that instead of appointing any regular employee on the vacant post in question on which he was working, the respondents are now going to engage another temporary person on the same. He also submits that Law is well settled on the point that a substitute cannot be replaced by another adhoc or temporary employee, but only by a regular one in accordance with rules.

The counsel for the respondents Sri D.S. Tiwari contests the averment made by learned counsel for the applicant. He submits that the person Sri Brijesh Kumar who was working on the post of GDS, BPM, Kadipur earlier has taken over the charge of the same post again. More-over, this is a contractual appointment and the applicant has no vested right on the same. The counsel for applicant Sri A.P. Singh contests this version and sticks to his position that the applicant in fact is being replaced by another temporary worker. I have considered the submissions made by counsel for the parties.

As per principle enunciated by the Apex Court in State of Haryana Vs. Piara Singh 1992 Vol.2 UPLBEC 1353 SC a substitute or a temporary employee cannot be replaced by substituting another temporary or adhoc employee,. But only by a regular employee appointed as per rules of recruitment. In view of the above, it is hereby provided that in case the respondents are going to replace the applicant by another temporary employee, the case of the applicant will be accorded priority and preferential treatment in view of his 1 ½ years of service on the post and in view of the settled point of law in the case of State of Haryana Vs. Piara Singh (supra). Request of interim relief stay is disposed of accordingly. List before D.R. on 8.2.2007."

4. From the perusal of the pleadings of the parties, it transpires that the applicant was engaged temporarily to work as Substitute by way of stop gap arrangement on the post of GDS BPM, Kadipur for intermittent periods w.e.f. 23/24.9.2004. The total period of such engagement is about one year and two months as specifically averred in para 4(d) of Counter Reply. As against this, no Rejoinder has been filed. Hence, it stands proved.

5. The applicant was disengaged w.e.f. 11.2.2006. Thereafter he moved a representation dated 28.2.2006 (Annexure A-7) saying that it had come to his notice that in his place somebody else was going to be replaced by another temporary

Dr

arrangement. Therefore, a request was made to permit him to continue till regular selection is made. This representation was rejected by impugned order dated 23.8.2006 (Annexure A-1) saying that the applicant had worked for intermittent periods and he has no vested right to continue on the post.

6. In view of the above proposition of law enunciated by the Apex Court in the case of State of Haryana Vs. Piara Singh (supra) a substitute/temporary employee cannot be replaced by substituting another temporary or adhoc employee, but only by a regular employee appointed as per relevant recruitment rules. The existence of substantive vacancy on the post of GDS, BPM, Kadipur has been claimed in para 4.8 of O.A. specifically which has not been specifically controverted in the entire Counter Reply. Having regard to the above proposition of law, this O.A. is finally disposed of with a direction that incase the respondents are going to make engagement on temporary basis on the post in question, the case of the applicant will be accorded priority and preferential treatment, keeping in view his aforesaid previous engagement of about one year and 02 months. However, it will be open to the respondents to make regular appointment on the post in question as per recruitment rules. No costs.

S.P. Singh
6.9.12
(S.P. Singh)
Member(A)

Alok Kumar Singh
6.9.12
(Justice Alok K Singh)
Member(J)

Girish/-